

United States District Court
for the District of Utah

RECEIVED

FEB 10 2005

FILED
CLERK U.S. DISTRICT COURT
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

Petition and Order for Warrant for Offender Under Supervision

Name of Offender: **John Furfay Walker**

Docket Number: **2:96-CR-00163-001-BSJ**

Name of Sentencing Judicial Officer: **Honorable Bruce S. Jenkins**

Date of Original Sentence: **February 12, 1997**

Original Offense: **Kidnapping**

Original Sentence: **115 Months BOP Custody/48 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **January 27, 2005**

PETITIONING THE COURT

☒ To issue a warrant and Whereabouts Unknown
toll the supervision term

CAUSE

The probation officer believes that the offender has violated the conditions of supervision as follows:

Allegation No. 1: On February 8, 2005, the defendant absconded from the Cornell Community Corrections Center, and his whereabouts are unknown.

I declare under penalty of perjury that the foregoing is true and correct

Richard G. Law

Richard G. Law
United States Probation Officer
February 9, 2005

THE COURT ORDERS:

- ☒ The issuance of a warrant and tolling of the supervision term
- ☐ The issuance of a summons
- ☐ No action
- ☐ Other

Bruce S. Jenkins
Honorable Bruce S. Jenkins
Senior United States District Judge

Date: 2/11/05

67

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:96-cr-00163

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Attorney's Office
DISTRICT OF UTAH

FILED
CLERK OF DISTRICT COURT

RECEIVED
FEB 11 P 10:00 AM

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB 16 2005

W. CULLEN BATTLE (A0246)
JOAN M. ANDREWS (A7803)
FABIAN & CLENDENIN,
a Professional Corporation
215 South State Street, Twelfth Floor
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900
Facsimile: (801) 532-3370

DEPUTY CLERK
OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS
BY MARKUS B. ZIMMER, CLERK
DEPUTY CLERK

Attorneys for Plaintiff
Metropolitan Water District of Salt Lake & Sandy

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SANDY CITY, a Utah Municipal Corporation, and
METROPOLITAN WATER DISTRICT OF SALT
LAKE & SANDY, a Metropolitan Water District,

Plaintiffs,

vs.

WADE, SANDY, WADE SANDY, and WADE
SANDY BUSINESS TRUST, believed to be
business names of STANLEY L. WADE, an
individual; et al.,

Defendants.

ORDER OF IMMEDIATE OCCUPANCY

Civil No. 2:05cv36(BSJ)

Judge Bruce S. Jenkins

Based on the Plaintiff's motion and the stipulation parties, the Court having determined that Plaintiff Metropolitan Water District of Salt Lake & Sandy ("Plaintiff") has the right of eminent domain, and that the purpose for which the premises are sought in the Complaint is a public purpose, and that immediate occupancy of said premises is necessary and proper, and good cause appearing,

It is hereby ORDERED that Plaintiff is permitted and authorized to occupy the premises which are sought in the Complaint and described in Exhibit "A" hereto (the "Property"), for the purposes described in the Complaint, and Plaintiff is hereby permitted to take immediate possession of the Property as required and described in the Complaint and continue the possession of the same pursuant to Utah Code § 78-34-9 pending further hearing and trial on the issue of the amount of just compensation to be awarded, subject to the following conditions:

1. Plaintiff shall deposit with the clerk of the court the sum of \$147,000, representing Plaintiff's appraised valuation of the Property sought to be condemned, and such amount shall be held as security for any award of just compensation in this action.

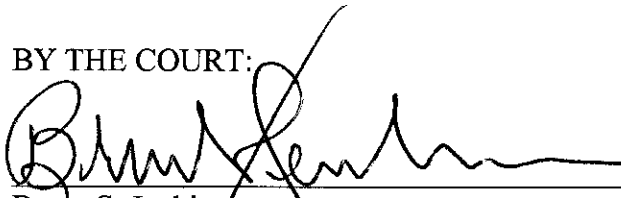
2. All claims regarding the amount of just compensation to be paid are preserved for later determination.

3. Defendants are granted an extension of time until March 1, 2005 to answer or otherwise respond to the Complaint.

4. Pursuant to the stipulation of the parties, any effort to remand the case to state court is intended to have no effect upon Plaintiffs' ability to occupy the Property subject to the terms of this Order.

ENTERED this 11 day of ^{February}~~January~~, 2005.

BY THE COURT:



Bruce S. Jenkins
United States District Court Judge

Approved as to Form (May Be Executed in Counterparts):

By: Joan M. Andrews
W. Cullen Battle
Joan M. Andrews
FABIAN & CLENDENIN
Attorneys for Plaintiff Metropolitan Water
District of Salt Lake & Sandy

By: _____
D. Kendall Perkins
Attorneys for Defendants Wade, Sandy, Wade Sandy,
Wade Sandy Business Trust, Stanley L. Wade,
Stanley Wade, Stanley Lee Wade, Stan Wade,
Janet Wade, and Lance Wade

By: _____
Wm. Shane Topham
PARSONS KINGHORN HARRIS, P.C.
Attorneys for Defendant Lloyd W. Wade

By: _____
Scott W. Lee
RANDLE, DEAMER & LEE, P.C.
Attorneys for Defendant Norman/Loebbecke Associates

By: _____
Mark T. Olson
Attorneys for Defendant N.A.R., Inc.

By: _____
Paul M. Warner, U.S. Attorney, District of Utah
Jeannette F. Swent, Assistant U.S. Attorney
Attorneys for Defendant United States of America

Approved as to Form (May Be Executed in Counterparts):

By: _____

W. Cullen Battle
Joan M. Andrews
FABIAN & CLENDENIN
Attorneys for Plaintiff Metropolitan Water
District of Salt Lake & Sandy

By:  _____

D. Kendall Perkins
Attorneys for Defendants Wade, Sandy, Wade Sandy,
Wade Sandy Business Trust, Stanley L. Wade,
Stanley Wade, Stanley Lee Wade, Stan Wade,
Janet Wade, and Lance Wade

By: _____

Wm. Shane Topham
PARSONS KINGHORN HARRIS, P.C.
Attorneys for Defendant Lloyd W. Wade

By: _____

Scott W. Lee
RANDLE, DEAMER & LEE, P.C.
Attorneys for Defendant Norman/Loebbecke Associates

By: _____

Mark T. Olson
Attorneys for Defendant N.A.R., Inc.

By: _____

Jeanette F. Swent
Assistant United States Attorney, District of Utah
Attorneys for Defendant United States of America

Approved as to Form (May Be Executed in Counterparts):

By: _____

W. Cullen Battle
Joan M. Andrews
FABIAN & CLENDENIN
Attorneys for Plaintiff Metropolitan Water
District of Salt Lake & Sandy

By: _____

D. Kendall Perkins
Attorneys for Defendants Wade, Sandy, Wade Sandy,
Wade Sandy Business Trust, Stanley L. Wade,
Stanley Wade, Stanley Lee Wade, Stan Wade,
Janet Wade, and Lance Wade

By:  _____

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PARSONS KINGHORN HARRIS, P.C.
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By: _____

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Attorneys for Defendant Norman/Loebbecke Associates

By: _____

Mark T. Olson
Attorneys for Defendant N.A.R., Inc.

By: _____

Paul M. Warner, U.S. Attorney, District of Utah
Jeannette F. Swent, Assistant U.S. Attorney
Attorneys for Defendant United States of America

Approved as to Form (May Be Executed in Counterparts):

By: _____

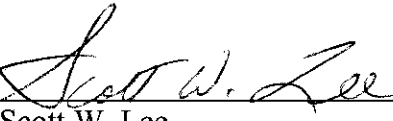
W. Cullen Battle
Joan M. Andrews
FABIAN & CLENDENIN
Attorneys for Plaintiff Metropolitan Water
District of Salt Lake & Sandy

By: _____

D. Kendall Perkins
Attorneys for Defendants Wade, Sandy, Wade Sandy,
Wade Sandy Business Trust, Stanley L. Wade,
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Janet Wade, and Lance Wade

By: _____

Wm. Shane Topham
PARSONS KINGHORN HARRIS, P.C.
Attorneys for Defendant Lloyd W. Wade

By:  _____

Scott W. Lee
RANDLE, DEAMER & LEE, P.C.
Attorneys for Defendant Norman/Loebbecke Associates

By: _____

Mark T. Olson
Attorneys for Defendant N.A.R., Inc.

By: _____

Paul M. Warner, U.S. Attorney, District of Utah
Jeannette F. Swent, Assistant U.S. Attorney
Attorneys for Defendant United States of America

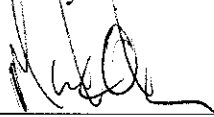
Approved as to Form (May Be Executed in Counterparts):

By: _____
W. Cullen Battle
Joan M. Andrews
FABIAN & CLENDENIN
Attorneys for Plaintiff Metropolitan Water
District of Salt Lake & Sandy

By: _____
D. Kendall Perkins
Attorneys for Defendants Wade, Sandy, Wade Sandy,
Wade Sandy Business Trust, Stanley L. Wade,
Stanley Wade, Stanley Lee Wade, Stan Wade,
Janet Wade, and Lance Wade

By: _____
Wm. Shane Topham
PARSONS KINGHORN HARRIS, P.C.
Attorneys for Defendant Lloyd W. Wade

By: _____
Scott W. Lee
RANDLE, DEAMER & LEE, P.C.
Attorneys for Defendant Norman/Loebbecke Associates

By:  _____
Mark T. Olson
Attorneys for Defendant N.A.R., Inc.

By: _____
Paul M. Warner, U.S. Attorney, District of Utah
Jeannette F. Swent, Assistant U.S. Attorney
Attorneys for Defendant United States of America

Approved as to Form (May Be Executed in Counterparts):

By: _____

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Joan M. Andrews
FABIAN & CLENDENIN
Attorneys for Plaintiff Metropolitan Water
District of Salt Lake & Sandy

By: _____

D. Kendall Perkins
Attorneys for Defendants Wade, Sandy, Wade Sandy,
Wade Sandy Business Trust, Stanley L. Wade,
Stanley Wade, Stanley Lee Wade, Stan Wade,
Janet Wade, and Lance Wade

By: _____

Wm. Shane Topham
PARSONS KINGHORN HARRIS, P.C.
Attorneys for Defendant Lloyd W. Wade

By: _____

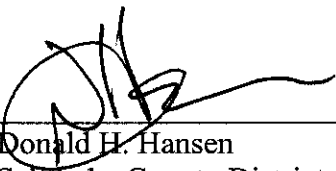
Scott W. Lee
RANDLE, DEAMER & LEE, P.C.
Attorneys for Defendant Norman/Loebbecke Associates

By: _____

Mark T. Olson
Attorneys for Defendant N.A.R., Inc.

By: Jeannette F. Swent 1/25/05

Paul M. Warner, U.S. Attorney, District of Utah
Jeannette F. Swent, Assistant U.S. Attorney
Attorneys for Defendant United States of America

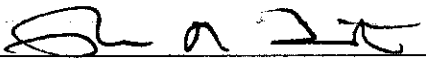
By: 
Donald H. Hansen
Salt Lake County District Attorney Office
Attorneys for Defendant Salt Lake County

By: _____
Ralph R. Tate
Attorney for Defendant Government Employees
Insurance Company

By: _____

Attorney for Defendant Arbor Commercial Properties, LC

By: _____
Donald H. Hansen
Salt Lake County District Attorney Office
Attorneys for Defendant Salt Lake County

By:  _____
Ralph R. Tate
Attorney for Defendant Government Employees
Insurance Company

By: _____

Attorney for Defendant Arbor Commercial Properties, LC

By: _____
Donald H. Hansen
Salt Lake County District Attorney Office
Attorneys for Defendant Salt Lake County

By: _____
Ralph R. Tate
Attorney for Defendant Government Employees
Insurance Company

By: _____

Attorney for Defendant Arbor Commercial Properties, LC

By: Steven C. Osborn
Steven C. Osborn
Attorney for Plaintiff Sandy City

APPENDIX A

SANDY WADE PROPERTY

A parcel of land in fee, located in the NE 1/4 NE 1/4 of Section 21, and the NW 1/4 NW 1/4 of Section 22, Township 3 South, Range 1 East, S.L.B.&M., Salt Lake County, Utah, more particularly described as follows:

Beginning at a point in the northerly boundary line of said parcel of land, which point is 243.12 feet N 89°51'21" West along the Section line and 207.70 feet S 0°08'34" West and 134.80 feet S 2°10'00" East and 670.41 feet East from the Northeast corner of said Section 21; and running thence East 113.29 feet along said northerly boundary line; thence S 8°39'08" East 271.29 feet; thence S 7°30'24" East 75.66 feet, more or less, to the southerly boundary line of said parcel of land; thence West 111.76 feet; thence N 8°39'08" West 347.18 feet to the point of beginning, containing 38826 sq. feet or 0.89 acres.

(Note: Rotate all bearings in the above description 0°04'00" clockwise to equal Project bearings.)

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00036

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

W. Cullen Battle, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

Mr. Steven C Osborn, Esq.
SANDY CITY CORPORATION
10000 S CENTENNIAL PARKWAY
SANDY, UT 84070
EMAIL

Jeannette F. Swent, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Rodney G. Snow (3028)
Neil A. Kaplan (3974)
Walter A. Romney, Jr. (7975)
Christopher B. Snow (8858)
CLYDE SNOW SESSIONS & SWENSON
201 South Main, Suite 1300
Salt Lake City, Utah 84111-2208
Telephone: (801) 322-2516
Facsimile: (801) 521-6280
Attorneys for Envirocare of Utah

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CLERK'S OFFICE
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FEB - 9 2005

U.S. DISTRICT COURT

RECEIVED

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA ex rel.)
Roger Lemmon, Patrick Cole and)
Kyle Gunderson,)

Plaintiff,)

v.)

ENVIROCARE OF UTAH,)

Defendant.)

**ORDER EXTENDING TIME TO
ANSWER OR OTHERWISE
RESPOND TO PLAINTIFF'S FIRST
AMENDED QUI TAM COMPLAINT**

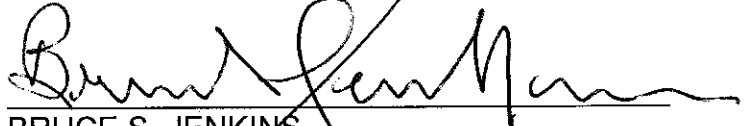
No. 2-02-CV904BSJ
Judge Bruce S. Jenkins

Pursuant to the Stipulation of the parties, and good cause appearing therefore;

IT IS HEREBY ORDERED that Defendant will have through and including
Wednesday, March 16, 2005 to answer or otherwise respond to Plaintiff's First
Amended Qui Tam Complaint filed in this matter, unless otherwise extended by order of
the Court.

Dated this 11 day of February 2005.

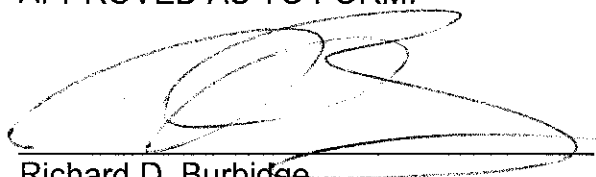
BY THE COURT:



BRUCE S. JENKINS
United States District Court Judge

73

APPROVED AS TO FORM:

A handwritten signature in dark ink, appearing to be "Richard D. Burbidge", written over a horizontal line.

Richard D. Burbidge
Jefferson W. Gross
For attorneys representing Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Order Extending Time to Answer or Otherwise Respond to Plaintiff's First Amended Qui Tam Complaint** was served by U.S. Mail, postage prepaid, on this 9th day of February 2005, on the following:

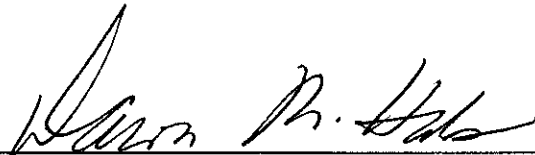
James S. Jardine, Esq.
Jeffrey W. Appel, Esq.
Rick L. Rose, Esq.
Jennifer L. Crane, Esq.
Ray, Quinney & Nebeker
P.O. Box 45385
Salt Lake City, Utah 84145-0385

Richard D. Burbidge, Esq.
Jefferson W. Gross, Esq.
Burbidge & Mitchell
215 South State Street, Suite 920
Salt Lake City, Utah 84111

Jeffrey D. Eisenberg, Esq.
Steve Russell, Esq.
M. Kevin Jones, Esq.
Eisenberg & Gilchrist
215 South State Street, Suite 900
Salt Lake City, Utah 84111

Paul M. Warner, Esq.
Eric A. Overby, Esq.
U.S. Attorney's Office
185 South State Street, #400
Salt Lake City, Utah 84111-1506

Peter D. Kysler, Esq.
Michael F. Hertz, Esq.
Polly Dammann, Esq.
John A. Kolar, Esq.
U.S. Department of Justice
Post Office Box 261
Ben Franklin Station
Washington, D.C. 20044



United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00904

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Eric A. Overby, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

Mr. Rodney G. Snow, Esq.
CLYDE SNOW SESSIONS & SWENSON
ONE UTAH CENTER 13TH FL
201 S MAIN ST
SALT LAKE CITY, UT 84111-2216
EMAIL

Robert K. Huffman, Esq.
MILLER & CHEVALIER CHARTERED
655 FIFTEENTH STREET NW 900
WASHINGTON, DC 20005-5710
EMAIL

Don Charles Lewis, Esq.
PIPER MARBURY RUDNICH WOLFE
1200 19TH ST NW
WASHINGTON, DC 20036-2430

Earl L. Silbert, Esq.
PIPER MARBURY RUDNICH WOLFE
1200 19TH ST NW
WASHINGTON, DC 20036-2430

James S. Jardine, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

Mr. Jeffrey D Eisenberg, Esq.
EISENBERG & GILCHRIST
900 PARKSIDE TOWER
215 S STATE ST
SALT LAKE CITY, UT 84111

EMAIL

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S ST ST STE 920
SALT LAKE CITY, UT 84111
EMAIL

Order Prepared and Submitted by:

SNELL & WILMER, LLP
Bryon J. Benevento (5254)
Matthew M. Boley (8536)
15 West South Temple, Ste. 1200
Salt Lake City, UT 84101
Phone: (801) 257-1900
Fax: (801) 257-1800

LATHAM & WATKINS, LLP
Steven C. Cherny, *Pro Hac Vice* (pending)
885 Third Avenue, Ste. 1000
New York, NY 10022

Maximilian A. Grant, *Pro Hac Vice*
555 Eleventh Street, N.W., Ste. 1000
Washington, D.C. 20004

Attorneys for defendant ELECTRONIC INTEGRATED SYSTEMS, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

WAVETRONIX, LLC, a Utah limited
liability company,

Plaintiff,

vs.

**ELECTRONIC INTEGRATED
SYSTEMS, INC.**, a Canadian corporation,

Defendant.

**ORDER DENYING REQUEST
FOR EXPEDITED DISCOVERY**

Case No. 2:05-cv-73

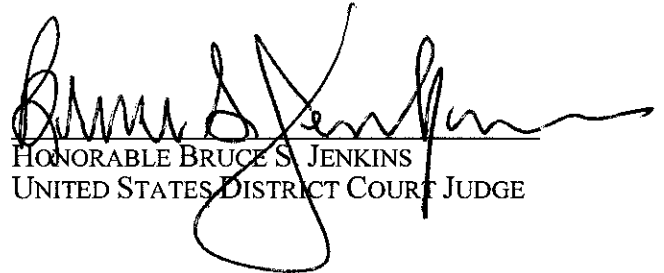
Honorable Bruce S. Jenkins

This matter came before the Court on February 2, 2005, at 1:00 p.m., upon Plaintiff Wavetronix Inc.'s Motion for Expedited Discovery, dated January 27, 2005, and Plaintiff's Ex Parte Motion for Entry of Protective Order, dated January 27, 2005 (collectively, the "Motions"), both filed by plaintiff Wavetronix, LLC ("Plaintiff"). The Honorable Bruce S. Jenkins presided. Plaintiff was represented by Brent P. Lorimer and Charles L. Roberts. Defendant Electronic Integrated Systems, Inc. ("Defendant") was represented by Bryon J. Benevento and Matthew M. Boley.

The Court having considered the Motions together with the supporting and opposing memoranda, oral argument of counsel and such other matters as the Court deemed appropriate, and good cause appearing therefore, it is hereby

ORDERED that the Motions shall be, and hereby are, denied without prejudice; and it is

FURTHER ORDERED that a hearing shall be, and hereby is, scheduled in the matter for March 16, 2006 at 1:30 p.m. at which time, if Plaintiff and Defendant have been unable to agree upon a time frame for conducting discovery in this action, the Court will hear further argument on the Motions.



HONORABLE BRUCE S. JENKINS
UNITED STATES DISTRICT COURT JUDGE

Approved as to form:

WORKMAN NYDEGGER



Brent P. Lorimer
Charles L. Roberts
Attorneys for Plaintiff WAVETRONIX, LLC

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that, on this ____ day of February, 2005, I caused a true and correct copy of the foregoing to be served upon the following named persons via first class U.S. mail, postage-prepaid, addressed as follows:

Brent P. Lorimer, Esq.
Charles L. Roberts, Esq.
Brett I. Johnson, Esq.
WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111

Bryon J. Benevento, Esq.
Matthew M. Boley, Esq.
SNELL & WILMER, LLP
15 West South Temple, Ste. 1200
Salt Lake City, UT 84101

Steven C. Cherny, Esq. (via e-mail)
LATHAM & WATKINS, LLP
885 Third Avenue, Ste. 1000
New York, NY 10022

Maximilian A. Grant, Esq. (via e-mail)
LATHAM & WATKINS, LLP
555 Eleventh Street, N.W., Ste. 1000
Washington, D.C. 20004

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00073

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Brent P. Lorimer, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Mr. Charles L Roberts, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Maximilian A. Grant, Esq.
LATHAM & WATKINS LLP
555 11TH STREET NW
WASHINGTON, DC 20004

Mr. Bryon J Benevento, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

RECEIVED

FEB 4 2005

FILED
CLERK U.S. DISTRICT COURT

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

FEB 11 P 1:07

DEPT. CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SCOTT KOFFMAN,

Plaintiff,

v.

BRIGHAM YOUNG UNIVERSITY, *et al.*,

Defendants.

SCHEDULING ORDER

Case No. 2:04-CV-00789 BSJ

This matter comes before the Court on the Attorneys' Planning Meeting Report filed by Plaintiff and all Defendants and the scheduling and status conference held before the Court on February 3, 2005. Upon consideration of the agreement of the parties as set forth in the Report, the representations of the parties' at the hearing, the additional matters raised by the Court at the status conference, and the schedule jointly requested by all parties, the Court hereby ORDERS as follows:

1. ANSWERS: The Defendants shall file and serve their answers to the Complaint in this civil action on or before February 17, 2005

2. INITIAL DISCLOSURES: The parties will exchange the information required by Rule 26(a)(1) on or before February 28, 2005.

3. STATUS CONFERENCE: The Court will hold a status conference on March 15, 2005, beginning at 1:20 PM, during which the parties shall report on the progress toward a settlement that they have been attempting to achieve.

4. DISCOVERY PLAN:

- a. All discovery will be completed no later than October 31, 2005.
- b. The parties may utilize the discovery methods proscribed and will adhere to the limits imposed by the Federal Rules of Civil Procedure and Local Rules. Unless the parties stipulate otherwise, the maximum number of depositions that may be taken by each party is ten (10) and no deposition may last longer than seven hours.
- c. Reports under Rule 26(a)(2) from retained experts on issues pertaining to liability and/or damages will be submitted on or before August 31, 2005 for Plaintiff and September 21, 2005 for Defendants.
- d. Supplementation of discovery pursuant to Fed. R. Civ. P. 26(e) shall be due in accordance with Rule 26(e).

5. ADDITIONAL PARTIES: The cut-off date for joining additional parties or amending pleadings is March 31, 2005.

6. DISPOSITIVE MOTIONS: The cutoff date for filing dispositive or potentially dispositive motions, if any, is November 30, 2005.


7. PRETRIAL:

- a. The parties shall file a stipulated pretrial order with the Court on January 25, 2006. The pretrial order shall be in the form prescribed by Appendix IV to DUCivR 16-1(e) and shall include an a statements of the claims of the parties, a statement of uncontroverted and contested issues of fact, a statement of contested issues of law, and a roster of exhibits and witnesses for all parties.

- b. The Court shall hold a pretrial conference on January 27, 2006, beginning at 9:30 AM. Counsel for all parties shall be prepared to address the substance of the pretrial order, including but not limited to legal issues and pertinent authority, factual issues and disputes, expert opinions, if any, and damages and computation of damages.

DATED THIS 11 day of February 2005.

BY THE COURT:



BRUCE S. JENKINS
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that, this 8th day of February 2005, I served copies of the foregoing proposed order, by first class mail, postage prepaid, on the following counsel:

David B. Thomas, Esquire
Brigham Young University
A-350 ASB
Provo, UT 84602

Darren K. Nelson, Esquire
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, UT 84111-1537

A handwritten signature in dark ink, appearing to read 'Gregory W. Stevens', written over a horizontal line.

Gregory W. Stevens

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00789

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Gregory W. Stevens, Esq.
2825 COTTONWOOD PKWY STE 500
SALT LAKE CITY, UT 84121
EMAIL

Mr. David B Thomas, Esq.
BRIGHAM YOUNG UNIVERSITY
A-350 ASB
PROVO, UT 84602
EMAIL

Mr. Robert S. Clark, Esq.
PARR WADDOUPS BROWN GEE & LOVELESS
185 S STATE ST STE 1300
PO BOX 11019
SALT LAKE CITY, UT 84147
EMAIL

Richard D. Burbidge (0492)
Jefferson W. Gross (8339)
Andrew J. Dymek (9277)
BURBIDGE & MITCHELL
215 S. State Street, Suite 920
Salt Lake City, UT 84111
Telephone: 801-355-6677
Facsimile: 801-355-2341

FILED
CLERK OF DISTRICT COURT
SALT LAKE CITY
FEB 11 P 4:07
JAMES L. HALL
CLERK

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FEB - 9 2005

FEB 11 2005

U.S. DISTRICT COURT

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS
IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

BAD ASS COFFEE COMPANY OF
HAWAII, INC., a Utah corporation,

Petitioner,

v.

ATTITUDE COFFEE CORP., a Canadian
corporation, BAD ASS ENTERPRISES,
INC., a Canadian corporation, and RON
PLUCER,

Respondents.

ORDER ON ORDER TO SHOW CAUSE

Civil No. 2:04CV00743

Judge Bruce S. Jenkins

On February 7, 2005, the hearing on this Court's Order to Show Cause came on before the Honorable Bruce S. Jenkins. Richard D. Burbidge and Andrew Dymek of Burbidge & Mitchell appeared on behalf of Petitioner Bad Ass Coffee Company of Hawaii, Inc. ("BACH"); Steven Densley of Strong & Hanni appeared on behalf of Respondents Attitude Coffee Corp., Bad Ass Enterprises, Inc., and Ron Plucer (collectively, "Respondents").

55

After considering the affidavits submitted by the parties and the arguments of counsel (both written and oral), and taking judicial notice of the file in this matter, the Court determines and finds as follows:

1. On December 6, 2004, Petitioner's Motion for Preliminary Injunction came on for hearing before this Court. Respondents appeared at this hearing through counsel, who presented both written and oral arguments.

2. On December 15, 2004, this Court issued a Preliminary Injunction, the form of which had been approved by Respondents' counsel, providing in pertinent part as follows:

Respondents, together with their officers, servants, employees, and all those acting in active concert or participation with them, are hereby immediately enjoined from using BACH's logo, trade names, trademarks, service marks, trade dress, or derivatives thereof, including, but not limited to, the names Bad Ass Coffee Co.®, Bad Ass Coffee®, Bad Ass Coffee Company®, Bad Ass Café, or any derivatives thereof, and all such shall be forthwith removed from public display by Respondents, including, but not limited to, any place of business or internet Web site.

3. On January 14, 2005, Respondent filed an *Ex Parte* Application for an Order to Show Cause re: Contempt, together with a supporting memorandum and Declaration of John Shortridge, from which it appeared that, notwithstanding the Preliminary Injunction, Respondents were continuing to use BACH's trademarks, trade dress, and logos, and derivatives thereof, in the sale and offers for sale of coffee products and merchandise.

4. Accordingly, on January 20, 2005, this Court issued an Order to Show Cause ordering the Respondents to appear before this Court on February 7, 2005 at 1:45 p.m. to show cause as to

why Respondent should not be held in contempt of the Preliminary Injunction. Petitioner has filed an affidavit of service indicating that Ron Plucer was personally served with the Order to Show Cause on January 25, 2005.

5. In issuing the Preliminary Injunction, this Court determined it had subject matter jurisdiction pursuant to 9 U.S.C. § 4 and 28 U.S.C. § 1332(a). This Court has continuing jurisdiction to enforce compliance with its Preliminary Injunction.

6. Having reviewed the affidavits of the parties, and the photographic and other evidence attached thereto as exhibits, the Court finds that there is clear and convincing evidence of numerous and continuing violations of the Preliminary Injunction by Respondents.

7. Respondents have not demonstrated that they cannot comply with the Preliminary Injunction by midnight, February 11, 2005.

Accordingly, it is hereby ORDERED as follows:

1. Respondents are ordered to be in full compliance with the Preliminary Injunction no later than midnight, February 11, 2005. Full compliance with the Preliminary Injunction shall include, but not be limited to, completely covering, removing, or obliterating any and all depictions of BACH's logo, trade names, trademarks, service marks, trade dress, or derivatives thereof, including, but not limited to, the names Bad Ass Coffee Co.®, Bad Ass Coffee®, Bad Ass Coffee Company®, Bad Ass Café, and all depictions of donkeys and/or palm trees, in any public display of Respondents and all those in active concert or participation with Respondents, including, but not limited to, any place of business or internet Web site.

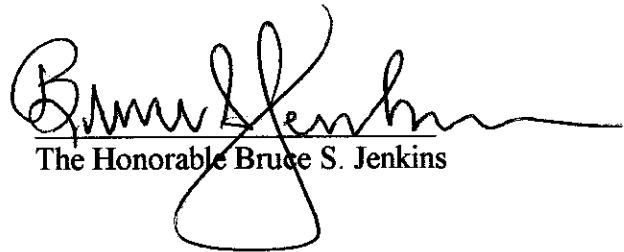
2. Beginning February 14, 2005, Respondents shall remit to this Court \$2500.00 for each day they are not in full compliance with the Preliminary Injunction.

3. Respondents are ordered to provide the Court photographs demonstrating that Respondents are in full compliance with the Preliminary Injunction on or before February 16, 2005.

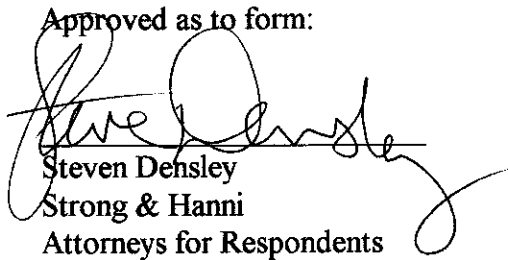
IT IS SO ORDERED.

Dated this 11 day of February, 2005.

BY THE COURT:


The Honorable Bruce S. Jenkins

Approved as to form:

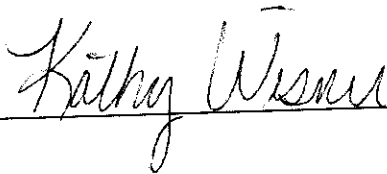

Steven Densley
Strong & Hanni
Attorneys for Respondents

P:\KWisner\Andy\Bad Ass\Pleadings\OrderonPreliminaryInjunction.wpd

CERTIFICATE OF SERVICE

I hereby certify that I mailed, postage prepaid, a true and accurate copy of the foregoing
ORDER ON ORDER TO SHOW CAUSE on the 9th day of February, 2005, to the following:

Steven T. Densley
STRONG & HANNI
Attorneys for Defendant
3 Triad Center, Suite 500
Salt Lake City, Utah 84180



United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00743

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S ST ST STE 920
SALT LAKE CITY, UT 84111
EMAIL

Ronald F. Price, Esq.
PETERS SCOFIELD PRICE
340 BROADWAY CENTRE
111 E BROADWAY
SALT LAKE CITY, UT 84111
JFAX 9,3222003

Steven T. Densley, Esq.
STRONG & HANNI
3 TRIAD CTR STE 500
SALT LAKE CITY, UT 84180
EMAIL

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FEB 11 2005

FILED
CLERK OF DISTRICT COURT

OFFICE OF THE DISTRICT JUDGE
JENKINS

DECEMBER 11 2004

PAUL M. WARNER, United States Attorney (#3389)
STANLEY H. OLSEN, Assistant United States Attorney (#2466)
GREGORY C DIAMOND, Assistant United States Attorney (#0878)
Attorneys for the United States of America
185 South State Street, #400
Salt Lake City, Utah 84111
Telephone: (801) 524-5682

CLERK OF DISTRICT COURT

CLERK OF DISTRICT COURT

RECEIVED CLERK

FEB - 9 2005

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

U.S. DISTRICT COURT

UNITED STATES OF AMERICA, :
 :
Plaintiff, :
 :
vs. :
 :
LEON D. BEAR, :
 :
Defendants. :

FINDINGS OF FACT AND ORDER
Case No. 2:03CR 00999BSJ
HONORABLE BRUCE S. JENKINS

On January 27, 2005, this matter came on for hearing pursuant to a series of motions filed by the defendant. The ruling regarding those motions are the subject of a separate Order. During the hearing the defendant was present and represented by counsel, Joseph H. Thibodeau and John F. Sullivan. The United States was represented by Assistant United States Attorneys Stanley H. Olsen and Gregory C Diamond. Having heard the representations of the parties and being familiar with the file herein, the Court makes and enters the following:

Findings of Fact

1. On December 15, 2004, the defendant filed eleven pretrial motions covering various topics.

52

2. On January 20, 2005, the defendant served a subpoena to the State of Utah, covering four state agencies and requesting a substantial quantity of documents and records.

3. The State of Utah filed a motion to quash the defendant's subpoena. A representative of the Attorney General's Office for the State of Utah appeared at the hearing on January 27, 2005. The defendant and counsel for the Utah Attorney General's Office represented that they believed that they could come to an agreement regarding those records that were the subject of the subpoena. This agreement consisted of provision, by the defendant, of a specific list of documents required and thereby a limitation on the efforts of the state to search and produce the records in question. This agreement would require substantial additional time to complete, however.

4. Based upon this Court's ruling on the motions filed by the defendant the parties will require additional time to prepare for the trial in this matter. The defendant specifically waived any right he may have to proceed under the time limitations of Title 18 U.S.C. § 3161, *et seq.*, commonly known as the Speedy Trial Act. *See also* Title 18 U.S.C. § 3161(h)(1)(F).

The ends of justice are best served by vacating the present trial date of February 22, 2005, and continuing this matter. Justice so served outweighs the best interests of the parties and the public in a speedy trial.

The failure to vacate and reset the trial date would deny to the parties the reasonable time required to obtain documents and prepare for trial, taking into account the exercise of due diligence by the parties and by the State of Utah.

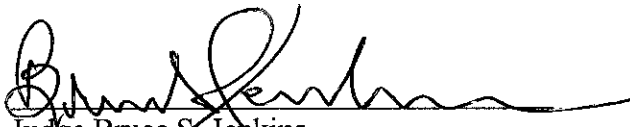
It is unreasonable to expect adequate preparation, or trial itself, within the time limitations as presently set or those established by the Speedy Trial Act. *See* Title 18 U.S.C. § 3161(h)(8)(A) and (B).

Based upon the foregoing Findings of Fact, the Court now enters the following ORDER:

1. The trial date of February 22, 2005, is vacated and reset for April 18, 2005, at 9:30 a.m.
2. All time from December 15, 2004, the filing of defendant's motions up through and including April 18, 2005, is excludeable and is hereby excluded from any calculation required by Title 18 U.S.C. § 3161, *et seq.*, commonly known as the Speedy Trial Act.

DATED this 11 day of February, 2005.

BY THE COURT:



Judge Bruce S. Jenkins
United States District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a copy of the foregoing FINDINGS OF FACT AND ORDER, was mailed postage prepaid to all parties named below, this 9 day of February, 2005.

Joseph H. Thibodeau
JOSEPH H. THIBODEAU, P.C.
155 South Madison Street, Suite 209
Denver, CO 80209

John F. Sullivan, III
JOHN F. SULLIVAN, III, P.C.
155 South Madison Street, Suite 209
Denver, Colorado 80209



United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00999

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Gregory C Diamond, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Neil A. Kaplan, Esq.
CLYDE SNOW SESSIONS & SWENSON
ONE UTAH CENTER 13TH FL
201 S MAIN ST
SALT LAKE CITY, UT 84111-2216
EMAIL

Joseph H. Thibodeau, Esq.
JOSEPH H TIBODEAU PC
155 S MADISON STE 209
DENVER, CO 80209
EMAIL

John F. Sullivan III, Esq.
JOHN F. SULLIVAN
155 S MADISON ST, STE 209
DENVER, CO 80209

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

Mr. Fred G Nelson, Esq.
UTAH ATTORNEY GENERAL'S OFFICE

160 E 300 S 5TH FLOOR
PO BOX 140873
SALT LAKE CITY, UT 84114-0873
EMAIL

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FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 8 10 40 2005

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

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2005 FEB -8 P 4: 19

U.S. DISTRICT COURT
DISTRICT OF UTAH

U.S. DISTRICT COURT
DISTRICT OF UTAH

Glenn R. Bronson (7362)
PRINCE, YEATES & GELDZAHLER
175 East 400 South, Suite 900
Salt Lake City, Utah 84111
(801) 524-1000

Attorneys for Plaintiff DIRECTV, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
Central Division

DIRECTV, INC., a California corporation,
Plaintiff,

vs.

SAMPLE, et al.,

Defendants.

**ORDER GRANTING DIRECTV'S
MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT**

Civil No. 2:04CV00872 BSJ

The Court having reviewed Plaintiff DIRECTV, Inc.'s ("DIRECTV's") Motion for Leave to File First Amended Complaint and Stipulation Thereto; and good cause appearing:

IT IS HEREBY ORDERED that DIRECTV's Motion for Leave to File First Amended Complaint is hereby granted.

- END OF DOCUMENT -

2/11/05

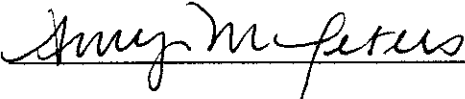
Bruce S. Jenkins
U.S.D.J.

15

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of February, 2005, I served the foregoing
**ORDER GRANTING DIRECTV'S MOTION FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT** by causing a true and correct copy thereof to be mailed, via
United States Mail, postage prepaid, addressed as follows, and sent by facsimile, to the
number listed, to the following parties:

Brian R. Barnhill (7686)
OSBORNE & BARNHILL, P.C.
11576 South State St., Bldg. 204
Draper, UT 84020
Attorneys for Defendants Troy and Marci Sample



G:\grb\DirectV\Sample 14251-51\p-order granting Motion for leave to file 1st amend.comp.wpd

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00872

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Glenn R. Bronson, Esq.
PRINCE YEATES & GELDZAHLER
175 E 400 S STE 900
SALT LAKE CITY, UT 84111
EMAIL

Spencer D. Freeman, Esq.
YARMUTH WILSDON CALFO PLLC
IDX TOWER
925 FOURTH AVE STE 2500
SEATTLE, WA 98104

Scott Wilsdon, Esq.
YARMUTH WILSDON CALFO PLLC
IDX TOWER
925 FOURTH AVE STE 2500
SEATTLE, WA 98104
EMAIL

Brian R Barnhill, Esq.
OSBORNE & BARNHILL
11576 S STATE BLDG 204
DRAPER, UT 84020
EMAIL

GRANT R. CLAYTON (Utah State Bar No. 4552)
BRETT J. DAVIS (Utah State Bar No. 7840)
CLAYTON, HOWARTH & CANNON, P.C.
P.O. Box 1909
Sandy, Utah 84091-1909
Telephone: (801) 255-5335
Facsimile: (801) 255-5338

MICHAEL A. OSWALD (California State Bar No. 87299)
JOHN D. TRAN (California State Bar No. 231761)
OSWALD & YAP
16148 Sand Canyon Avenue
Irvine, California 92618
Telephone: (949) 788-8900
Facsimile: (949) 788-8980

Attorneys for Defendants and Counter-claimants
YUAN MEI CORPORATION and AMAGINE GARDEN, INC.

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2005 FEB 11 P 1:07

2005 FEB 10 P 6:30

U.S. DISTRICT COURT
DISTRICT OF UTAH

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FEB 11 2005

OFFICE OF U.S. DISTRICT JUDGE
BRUCE S. JENKINS

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

ORBIT IRRIGATION)
PRODUCTS, INC., a Utah)
corporation,)

Plaintiff,)

v.)

YUAN MEI CORPORATION, a)
Taiwan corporation, AMAGINE)
GARDEN, INC., a Taiwan)
corporation, GARY WANG, an)
individual, and DOES 1-5,)

Defendants.)

~~[Proposed]~~

ORDER ENLARGING TIME TO SERVE
CHEWINK CORPORATION AND S.T.
PONG AND FOR REISSUE OF LETTERS
ROGATORY

Civil No. 1:01 CV 051
Judge Bruce S. Jenkins

89

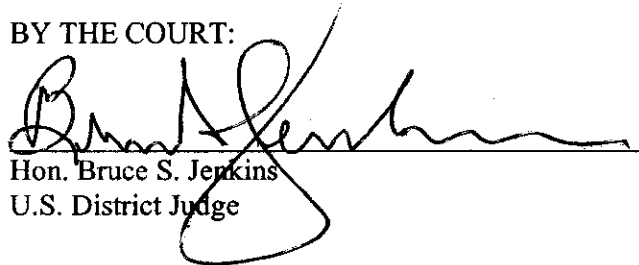
YUAN MEI CORPORATION, a)
Taiwan corporation, and)
AMAGINE GARDEN, INC., a)
Taiwan corporation,)
)
Counter-claimants,)
)
v.)
)
ORBIT IRRIGATION PRODUCTS,)
INC., a Utah corporation;)
CHEWINK CORP., a Taiwan)
corporation, SHIN TAI SPURT)
WATER OF THE GARDEN)
TOOLS CO., LTD., a Taiwan)
corporation, K. C. ERICKSEN, an)
individual, C. Y. CHENG, an)
individual, S. T. PONG, an)
individual, and DOES 1-15.)
)
Counter-defendants.)
)

Based on the Stipulated Motion to Enlarge Time to Serve Chewink Corporation and S.T. Pong and for an Order to Reissue Letters Rogatory, Memorandum in Support of the Stipulated Motion to Enlarge Time To Serve Chewink Corporation and S.T. Pong and for an Order to Reissue Letters Rogatory, and the Declaration of Grant R. Clayton and other good cause existing, IT IS HEREBY ORDERED that Counter-claimants YUAN MEI CORPORATION, a Taiwan corporation, and AMAGINE GARDEN, INC., also a Taiwan corporation, be granted until August 10, 2005 pursuant to Rule 6(b) of the Federal Rules of Civil Procedure to serve the following Counter-Defendants with letters rogatory, Counter-Claims, and any amended counter-claims: CHEWINK CORPORATION, a Taiwan corporation and S.T. PONG, an individual residing in Taiwan.

IT IS FURTHER ORDERED that the letters rogatory be reissued to the appropriate judicial authority in Taiwan requesting international judicial assistance to effect service of process on Counter-defendants Chewink Corp., a Taiwan corporation with its principal place of business in Taipei Hsien, Taiwan and S. T. Pong, an individual residing in Taiwan. The letters rogatory executed by this Court shall be returned to counsel for Counter-claimants for transmittal to the American Institute of Taiwan.

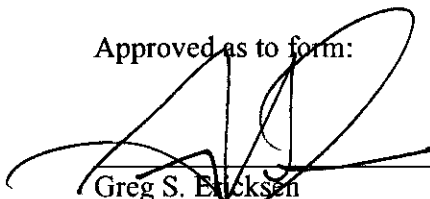
DATED this 2 day of 11, 2005.

BY THE COURT:



Hon. Bruce S. Jenkins
U.S. District Judge

Approved as to form:



Greg S. Evcksen
Counsel for Orbit Irrigation Products, Inc.

2/9/05
Date

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing [Proposed]

Order Enlarging Time to Serve Chewink Corporation and S.T. Pong and for Reissue of Letters

Rogatory by U.S. mail, postage prepaid, on this 10th day of February,
2005, to:

Greg S. Ericksen
P.O. Box 609
Bountiful, Utah 84011-0609

Craig J. Madson
Madson & Metcalf
900 Gateway Tower West
15 West South Temple
Salt Lake City, Utah 84101-1605

Mark M. Bettilyon
Arthur S. Berger
Ray Quinney & Nebeker
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385



United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:01-cv-00051

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mark M Bettilyon, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

Craig J. Madson, Esq.
MADSON & METCALF
900 GATEWAY TOWER WEST
15 W S TEMPLE
SALT LAKE CITY, UT 84101-1605
EMAIL

Mr. Greg S Ericksen, Esq.
PO BOX 609
BOUNTIFUL, UT 84011-0609
EMAIL

Michael A. Oswald, Esq.
OSWALD & YAP
16148 SAND CANYON AVE
IRVINE, CA 92618

John D. Tran, Esq.
OSWALD & YAP
16148 SAND CANYON AVE
IRVINE, CA 92618

Mr. Grant R Clayton, Esq.
CLAYTON HOWARTH & CANNON
PO BOX 1909
SANDY, UT 84091-1909
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 11 P 3:15

DISTRICT OF UTAH

DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

MICHAEL LEE SORENSEN

Defendant(s),

PRETRIAL ORDER PURSUANT

TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-64 TC

The above-entitled action came on for pretrial conference **February 4, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/14/05**, (2 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Tena Campbell by **4/13/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

12

3. Pretrial motions are to be filed by: 2/25/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/31/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Tena Campbell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 4th day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

alt

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00064

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

David F. Backman, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. L. Clark Donaldson, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, DISTRICT COURT

APR 11 P 3:17

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY _____
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

ROBIN BLAZE THURBER

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:04-CR-839 TC

The above-entitled action came on for pretrial conference **February 3, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/13/05**, (2 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Tena Campbell by **4/12/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

11

3. Pretrial motions are to be filed by: 2/24/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/30/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Tena Campbell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 3rd day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

alt

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00839

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mark K Vincent, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Jamie Zenger, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK OF DISTRICT COURT

2005 FEB 11 P 3:17

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DEPUTY CLERK

DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

SHAWN GLEN EVANS

Defendant(s),

PRETRIAL ORDER PURSUANT

TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-32 TC

The above-entitled action came on for pretrial conference **February 2, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/11/05**, (2 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Tena Campbell by **4/8/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

10

3. Pretrial motions are to be filed by: 2/28/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/28/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Tena Campbell's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 2 day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

alt

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00032

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Trina A Higgins, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

David V. Finlayson, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

Gifford W. Price, Esq. (Bar No. 2647)
Gregory N. Jones, Esq. (Bar No. 5978)
MACKEY PRICE THOMPSON & OSTLER
50 American Plaza II
57 West 200 South
Salt Lake City, Utah 84101
Phone: (801) 575-5000

FILED
CLERK OF DISTRICT COURT
OCT 11 P 3 01
DISTRICT COURT
DEPUTY CLERK

Attorneys for Defendant/Counterclaimant Maximum Human Performance, Inc.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, GENERAL DIVISION

MONARCH NUTRITIONAL
LABORATORIES, INC., a Delaware
corporation,

Plaintiff,

v.

MAXIMUM HUMAN PERFORMANCE,
INC., a New Jersey corporation,

Defendant.

MAXIMUM HUMAN PERFORMANCE,
INC., a New Jersey Corporation,

Counter Plaintiff,

v.

MONARCH NUTRITIONAL
LABORATORIES, INC., a Delaware
corporation,

Counterclaim Defendant.

**ORDER GRANTING STIPULATED AND
JOINT MOTION TO STRIKE AND
RESCHEDULE TRIAL AND FINAL
PRETRIAL CONFERENCE**

Civil No. 2:03CV 474 TC

Judge: Tena Campbell

Magistrate Judge: David Nuffer

101

Based on stipulation of the parties and good cause appearing,

IT IS HEREBY ORDERED that the parties' Stipulated and Joint Motion to Strike and Reschedule Trial and Final Pretrial Conference is hereby granted. Present trial and Final Pretrial Conference dates are hereby stricken and this matter is now set for a four day jury trial beginning on September 6, 2005 at 8:30 a.m. with the Final Pretrial Conference set for August 16, 2005 at 3:00 p.m.

DATED this 11 day of January, 2005. *flv rc*

BY THE COURT

By: *Tena Campbell*

Honorable Tena Campbell
United States District Court Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00474

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Gifford W Price, Esq.
MACKEY PRICE THOMPSON & OSTLER
57 W 200 S STE 350
SALT LAKE CITY, UT 84101-1655
JFAX 9,5755006

Ms. Peggy A Tomsic, Esq.
TOMSIC LAW FIRM LLC
136 E SO TEMPLE #800
SALT LAKE CITY, UT 84111
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ESEQUIEL PENA-VALENZUELA,

Defendant.

ORDER

Case No. 2:03-CR-920 TC

On Thursday, February 10, 2005, counsel appeared before the court to discuss the status of evidentiary issues raised by defense counsel in three different motions: (1) Defendant's Motion for Disclosure of the True Identity of Cooperating Witness(es) (Docket No. 28) (hereinafter "the CI Motion"); (2) Defendant's Motion to Suppress Statements Pursuant to *Miranda* (Docket No. 31) (hereinafter "the *Miranda* Motion"); and (3) Defendant's Motion to Suppress [Evidence Obtained From] Search Due to Insufficiency of the Affidavit for Search Warrant (Docket No. 33) (hereinafter "the Affidavit Motion").

Based on a discussion with counsel for both parties, the parties agreed with the court that it would be more efficient to address all three motions in one final argument. However, the *Miranda* Motion requires an evidentiary hearing which has not yet occurred and the CI Motion is not yet fully briefed. Accordingly, rather than hold the originally scheduled final argument on the Defendant's Affidavit Motion on February 10, 2005, all agreed to the following briefing and hearing schedule:

54

1. The Affidavit Motion: the parties have agreed to submit the issue on the briefs without oral argument. However, the issue will be decided at the same time the *Miranda* issues are resolved.

2. The CI Motion: The issue regarding disclosure of the confidential informant's identity will be decided following briefing and final argument. The United States' opposition brief is due on February 24, 2005, and the Defendant's reply brief is due on March 10, 2005. Final argument will be held on the same date as the final argument on the *Miranda* Motion, which will be scheduled at the close of the evidentiary hearing on the *Miranda* Motion.

3. The *Miranda* Motion: The court will hold an evidentiary hearing on this issue on February 23, 2005, at 10 a.m. At the close of the evidentiary hearing, the court will set a briefing schedule for the motion and a date for final argument on the *Miranda* issue as well as the issues raised in the CI Motion.

IT IS SO ORDERED this 11 day of February, 2005.

BY THE COURT:



TENA CAMPBELL
United States District Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00920

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Michael P. Kennedy, Esq.
US ATTORNEY'S OFFICE

/
EMAIL

Mr. Edwin S. Wall, Esq.
WALL LAW OFFICES
8 E BROADWAY STE 500
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

/
EMAIL

US Probation
DISTRICT OF UTAH

/
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
CLERK OF DISTRICT COURT
15 FEB 11 P 3:16
BY: [Signature]
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

BRANDY STAPLES-QUILES

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-31 TS

The above-entitled action came on for pretrial conference **February 4, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/14/05**, (2 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by **4/13/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

9

3. Pretrial motions are to be filed by: 2/25/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/31/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Released.

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 4th day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

jmr

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00031

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lynda Rolston Krause, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

A. Chelsea Koch, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

CLAYTON MITCHELL

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-33 DKW

The above-entitled action came on for pretrial conference **February 2, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/13/05**, (3 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge David K. Winder by **4/12/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

13

3. Pretrial motions are to be filed by: 2/28/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/30/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge David K. Winder's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 2 day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

jmr

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00033

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Trina A Higgins, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Henri R. Sisneros, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

David N. Wolf (6688)
Kamie F. Brown (8520)
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

Attorneys for Defendants and Third-Party Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CORI AMES, individually and as personal
representative for the heirs of ADAM AMES,
deceased,

Plaintiff,

vs.

EL PASO FIELD SERVICES COMPANY, a
corporation; EL PASO FIELD OPERATIONS
COMPANY, a corporation; EL PASO
PRODUCTION OIL & GAS COMPANY, a
corporation; EL PASO PRODUCTION
COMPANY, a corporation; EL PASO
CORPORATION, a corporation;

Defendants.

EL PASO FIELD SERVICES COMPANY, a
corporation; EL PASO FIELD OPERATIONS
COMPANY, a corporation; EL PASO
PRODUCTION OIL & GAS COMPANY, a
corporation; EL PASO PRODUCTION
COMPANY, a corporation; EL PASO
CORPORATION, a corporation;

Third-Party Plaintiffs,

vs.

IOWA TANKLINES, INC., a Nevada
corporation,

Third-Party Defendant.

ORDER GRANTING MOTION TO AMEND

Case No. 2:02cv-1144

Honorable Ted Stewart

Magistrate Judge Samuel Alba


128

This matter came before the Court for hearing on January 10, 2005 upon Third-Party Plaintiffs El Paso Field Services Company, El Paso Field Operations Company, El Paso Production Oil & Gas Company, El Paso Production Company, and El Paso Corporation's ("El Paso") *MOTION TO AMEND ITS AMENDED THIRD-PARTY COMPLAINT*, dated November 24, 2004 (the "**Motion**") in the above-captioned matter. At the hearing on the *Motion*, counsel for El Paso and Great West entered their appearances on the record and presented oral argument. El Paso was represented by Kamie F. Brown, Snell & Wilmer, LLP. Third-Party Defendant Great West was represented by Dale Lambert, Christensen & Jensen. Tracy Wilder, Berrett & Associates, appeared for Third-Party Defendant Iowa Tanklines but did not oppose El Paso's *Motion*.

After considering the *Motion*, the memoranda in opposition to and in support of the *Motion*, the other pleadings of record in the case, and the arguments by counsel, the Court made its findings and conclusions upon the record, and the same are incorporated herein by this reference. Accordingly, it is hereby

ORDERED that the *Motion* is granted, and the Third-Party Complaint is hereby deemed amended as shown by the proposed Second Amended Third-Party Complaint attached as Exhibit A hereto.

DATED this 11th day of January, 2005.

BY THE COURT: 
Magistrate Judge Samuel Alba

APPROVAL AS TO FORM:
CHRISTENSEN & JENSEN

Dale Lambert
BERRETT & ASSOCCOATES

Barbara Berrett
Tracy Wilder

CERTIFICATE OF SERVICE

This is to certify that the foregoing ORDER GRANTING MOTION TO AMEND was hand-delivered this 14th day of January, 2005, to:

Barbara K. Berrett
Tracy Wilder
Berrett & Associates
Key Bank Tower, Suite 350
50 South Main Street
Salt Lake City, UT 84101

Dale J. Lambert, Esq.
CHRISTENSEN & JENSEN
50 South Main #1500
Salt Lake City, UT 84144

Kenneth T. Beem

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-01144

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Barbara K Berrett, Esq.
BERRETT & ASSOCIATES
50 S MAIN STE 530
SALT LAKE CITY, UT 84144
EMAIL

David N. Wolf, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Mr. David R Olsen, Esq.
DEWSNUP KING & OLSEN
36 S STATE ST STE 2020
SALT LAKE CITY, UT 84111
EMAIL

Barbara L. Townsend, Esq.
36 S STATE STE 2020
SALT LAKE CITY, UT 84108
EMAIL

Mr. Dale J Lambert, Esq.
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
JFAX 9,3553472

Exhibit A

David N. Wolf (6688)
Kamie F. Brown (8520)
SNELL & WILMER L.L.P.
15 West South Temple, Suite 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

Attorneys for Defendants and Third-Party Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CORI AMES, individually and as personal
representative for the heirs of ADAM AMES,
deceased,

Plaintiff,

vs.

EL PASO FIELD SERVICES COMPANY, a
corporation; EL PASO FIELD OPERATIONS
COMPANY, a corporation; EL PASO
PRODUCTION OIL & GAS COMPANY, a
corporation; EL PASO PRODUCTION
COMPANY, a corporation; EL PASO
CORPORATION, a corporation,

Defendants.

EL PASO FIELD SERVICES COMPANY, a
corporation; EL PASO FIELD OPERATIONS
COMPANY, a corporation; EL PASO
PRODUCTION OIL & GAS COMPANY, a
corporation; EL PASO PRODUCTION
COMPANY, a corporation; EL PASO
CORPORATION, a corporation,

Third-Party Plaintiffs,

vs.

IOWA TANKLINES, INC., a Nevada
corporation, GREAT WEST CASUALTY
INSURANCE, a corporation;

Third-Party Defendants.

**SECOND AMENDED
THIRD-PARTY COMPLAINT**

Case No. 2:02cv-1144

Judge Ted Stewart
Magistrate Judge Samuel Alba

Comes now Defendants and Third-Party Plaintiffs El Paso Field Services Company, El Paso Field Operations Company, El Paso Production Oil & Gas Company, El Paso Production Company, and El Paso Corporation (hereinafter "El Paso"), and for cause of action against Third-Party Defendants Iowa Tank Lines, Great West Casualty Insurance, states as follows:

GENERAL ALLEGATIONS

1. Defendants and Third-Party Plaintiffs El Paso Field Services Company, El Paso Field Operations Company, El Paso Oil & Gas Company, El Paso Production Company, and El Paso Corporation are incorporated in the State of Delaware.

2. Upon information and belief, Iowa Tank Lines is incorporated in the State of Nevada with its principle place of business in the State of Iowa.

3. Upon information and belief, Great West Casualty Insurance is incorporated in the State of Illinois with its principle place of business in the State of Nebraska.

4. El Paso owns and operates several petrochemical facilities located in and around Utah, which are utilized in the refining and storage of various petrochemical products.

5. In particular, El Paso owns and operates the Rhodes Moon Central Tank Battery, which is located near highway 87, about 7 miles north and 1 ¼ miles west of Duchesne, Utah. The Rhodes Moon Central Tank Battery is a blending plant where crude oil and condensate/natural gasolines are blended together.

6. Iowa Tank Lines is a common carrier engaged in the transportation of petroleum and other petrochemical products throughout the United States, including Utah. Iowa Tank Lines was contracted to transport petrochemical products to and from a number of El Paso's facilities, including the Rhodes Moon Central Tank Battery.

7. As a condition for Iowa Tanklines to provide transportation services for El Paso, Iowa Tank Lines is required to obtain and maintain commercial general liability insurance, automobile liability insurance, and umbrella liability insurance.

8. Plaintiff's decedent, Adam Ames, was a petrochemical transport driver for Iowa Tank Lines on or about September 17, 2001, when he drove to the Rhodes Moon Central Tank Battery near Duchesne, Utah.

9. Adam Ames died while apparently loading the blended product into his petrochemical tanker on or about September 17, 2001.

10. Plaintiff filed suit against El Paso on or about October 17, 2002, alleging that El Paso's conduct caused or contributed to Adam Ames' death.

11. At the time the incident described in Plaintiff's Complaint occurred, and at the time the instant lawsuit was filed, El Paso was listed as an additional insured on Iowa Tank Lines' insurance policy carried by Great West Casualty Insurance.

12. The amount in controversy is in excess of \$75,000.00 exclusive of interest and costs.

13. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

14. Venue is appropriate with this Court pursuant to 28 U.S.C. § 1391.

FIRST CAUSE OF ACTION

INDEMNIFICATION – IOWA TANK LINES

15. Paragraphs 1 through 14 are incorporated herein by reference.

16. Iowa Tank Lines is obligated to indemnify and hold harmless El Paso from any and all losses, damages, claims, demands, causes of action, and liabilities that may be suffered or

incurred at any time by El Paso due to, arising out of, or resulting from the injury to or death of Adam Ames.

17. Iowa Tank Lines' indemnification obligation to El Paso arises out of El Paso's status as an additional insured on Iowa Tank Lines' insurance policy.

18. If El Paso is liable to Plaintiff for any claimed damages, then El Paso is entitled to indemnification from Iowa Tank Lines, in the amount of Plaintiff's damages so caused, plus interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

BREACH OF CONTRACT – IOWA TANK LINES

19. Paragraphs 1 through 18 are incorporated herein by reference.

20. As a condition for Iowa Tanklines to provide transportation services for El Paso, Iowa Tank Lines is required to obtain and maintain commercial general liability insurance, automobile liability insurance, and umbrella liability insurance.

21. El Paso is listed as an additional insured on Great West Casualty Insurance Policy No. CLP84776E, according to certain Certificates of Insurance provided by Iowa Tanklines or its agent, and perhaps other policies, for commercial general liability insurance, automobile liability insurance, and umbrella liability insurance.

22. El Paso is informed and believes that at the time of the subject accident and the filing of the instant lawsuit, El Paso was listed as an additional insured on the aforementioned insurance policies.

23. If, in fact, Iowa Tanklines or its agent failed to carry the requisite insurance policies and to name El Paso as an additional insured thereon, Iowa Tank Lines materially breached its obligations to El Paso.

24. Therefore, in the alternative, El Paso seeks damages for breach of contract in an amount to be proven at trial. Such damages include, but are not limited to, the amount of Plaintiff's damages so caused, plus interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

BREACH OF WARRANTY – IOWA TANK LINES

25. Paragraphs 1 through 24 are incorporated herein by reference.

26. By providing Certificates of Insurance indicating El Paso was an additional insured, Iowa Tank Lines or its agent warranted that El Paso was in fact an additional insured under the aforementioned insurance policies.

27. El Paso is informed and believes that at the time of the subject accident and the filing of the instant lawsuit, El Paso was listed as an additional insured on the aforementioned insurance policies.

28. If, in fact, Iowa Tanklines or its agent failed to carry the requisite insurance policies despite their representations, Iowa Tank Lines breached warranties made to El Paso about its status as an additional insured.

29. Therefore, in the alternative, El Paso seeks damages for breach of warranty in an amount to be proven at trial. Such damages include, but are not limited to, the amount of Plaintiff's damages so caused, plus interest, costs, and attorneys' fees.

FOURTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION – IOWA TANK LINES

30. Paragraphs 1 through 29 are incorporated herein by reference.

31. By providing Certificates of Insurance indicating El Paso was an additional insured, Iowa Tank Lines or its agent represented that El Paso was in fact an additional insured under the aforementioned insurance policies.

32. El Paso is informed and believes that at the time of the subject accident and the filing of the instant lawsuit, El Paso was listed as an additional insured on the aforementioned insurance policies.

33. If, in fact, Iowa Tanklines or its agent failed to carry the requisite insurance policies despite their representations, Iowa Tank Lines negligently and recklessly misrepresented that El Paso was an additional insured, a representation upon which El Paso relied.

34. Therefore, in the alternative, El Paso seeks damages for negligent misrepresentation in an amount to be proven at trial. Such damages include, but are not limited to, the amount of Plaintiff's damages so caused, plus interest, costs, and attorneys' fees.

FIFTH CAUSE OF ACTION

DECLARATORY RELIEF – GREAT WEST CASUALTY INSURANCE

35. Paragraphs 1 through 34 are incorporated herein by reference.

36. At the time of the subject accident and the filing of the instant lawsuit, El Paso was listed as an additional insured on the insurance policy carried by Great West Casualty Insurance, Insurance Policy No. CLP84776E, and perhaps other policies, as represented by Great West Casualty Insurance or its agent.

37. El Paso asserts that Great West Casualty Insurance is obligated to provide El Paso with a defense due to El Paso's status as an additional insured under Policy No. CLP84776E, and perhaps other policies, as represented by Great West Casualty Insurance or its agent.

38. El Paso is entitled to an order declaring that Great West Casualty Insurance is obligated to provide El Paso with a defense and indemnify El Paso due to its status as an additional insured, as represented by Great West Casualty Insurance or its agent.

SIXTH CAUSE OF ACTION

BREACH OF CONTRACT - GREAT WEST CASUALTY INSURANCE

40. Paragraphs 1 through 39 are incorporated herein by reference.

41. At the time of the subject accident and the filing of the instant lawsuit, El Paso was listed as an additional insured on the insurance policy carried by Great West Casualty Insurance and Virginia Surety Company, Inc., Insurance Policy No. CLP84776E, and perhaps other policies, as represented by Great West Casualty Insurance or its agent.

42. Insurance Policy No. CLP84776E and perhaps other policies, constitutes a binding and enforceable contract between El Paso, as a third-party beneficiary, and Great West Casualty Insurance, as represented by Great West Casualty Insurance or its agent.

43. Under Insurance Policy No. CLP84776E, and perhaps other policies, Great West Casualty Insurance is obligated to defend, insure and indemnify El Paso, as represented by Great West Casualty Insurance or its agent.

44. In the event Great West Casualty Insurance does not agree to defend, insure and indemnify El Paso, such a failure constitutes a material breach of its obligations to El Paso, as represented by Great West Casualty Insurance or its agent.

45. Great West Casualty Insurance is liable for its own actions or inactions, and the actions or inactions of its agent, in the material breach of its obligations to El Paso.

WHEREFORE, El Paso prays for judgment against Iowa Tank Lines and Great West Casualty Insurance, as hereinafter set forth:

a. For judgment on its Causes of Action against Iowa Tank Lines for Indemnity, or Alternatively, Breach of Contract, Breach of Warranty, and Negligent Misrepresentation, plus interest, costs and attorneys' fees;

b. For the dollar amount, if any, that El Paso may be liable to Plaintiff through settlement or trial;

c. For declaratory relief on its Cause of Action against Great West Casualty Insurance, or alternatively, for judgment on its Cause of Action for Breach of Contract, which damages include, but are not limited to, the amount of Plaintiff's damages so caused, plus interest, costs, and attorneys' fees; and

d. For such other and further relief as the Court deems equitable and just.

DATED this ____ day of November, 2004.

SNELL & WILMER, L.L.P.

David N. Wolf
Kamie F. Brown
Attorneys for Defendants and Third-Party
Plaintiffs El Paso

CERTIFICATE OF SERVICE

This is to certify that the foregoing SECOND AMENDED THIRD-PARTY COMPLAINT was hand-delivered, this _____ day of November, 2004, to:

Barbara K. Berrett
Tracy Wilder
Berrett & Associates
Key Bank Tower, Suite 350
50 South Main Street
Salt Lake City, UT 84101

Dale Lambert
CHRISTENSEN & JENSEN, P.C.
50 South Main Street, Suite 1500
Salt Lake City, UT 84144

Erik Strindberg (Bar No. 4154)
Ralph E. Chamness (Bar No. 6511)
STRINDBERG SCHOLNICK & CHAMNESS, LLC
44 Exchange Place, 2nd Floor
Salt Lake City, UT 84111
Telephone: (801) 359-4169
Attorneys for Plaintiff

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 11 P 2:07
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FEB - 8 2005
U.S. DISTRICT COURT
RECEIVED

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEB 8 2005
SAMUEL ALBA
U.S. MAGISTRATE

DAVID ANDREW CALLAWAY

Plaintiff,

vs.

SKYWEST AIRLINES, INC.,

Defendant.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PROTECTIVE
ORDER**

Case No. 2:04CV00179

Judge Ted Stewart
Magistrate Judge Samuel Alba

The Court heard oral argument on Plaintiff's Motion for Protective Order on February 1, 2005. Plaintiffs were represented by Ralph E. Chamness and Defendant was represented by Scott M. Petersen and David N. Kelley. The Court having considered the arguments of counsel, the pleadings on file and being otherwise fully advised on this matter:

IT IS ORDERED:

1. Plaintiff's Motion for Protective Order is GRANTED.

35

2. Defendant may not seek any information from Polar Air, any of its related entities, or any entity identified by Plaintiff as a potential employer, by way of subpoena or any other method of discovery allowed under the Federal Rules of Civil Procedure.
3. Defendants may file a Motion to Compel seeking the information covered by this Protective Order after re-deposing Plaintiff, deposing Tiffany Cotter and after Plaintiff has provided Defendant with a copy of the taped voice mails in Plaintiff's possession.

DATED this 11th day of February, 2005.

BY THE COURT

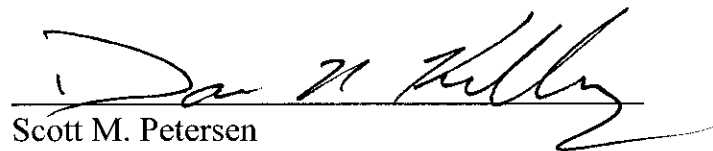


SAMUEL ALBA

United States District Court Magistrate

Approved as to Form:

FABIAN & CLENDENIN

A handwritten signature in dark ink, appearing to read "David N. Kelley", is written over a horizontal line.

Scott M. Petersen

David N. Kelley

Attorneys for Defendant

U:\current clients\Callaway_DA\Order_Motion_ProtectiveOrder.wpd

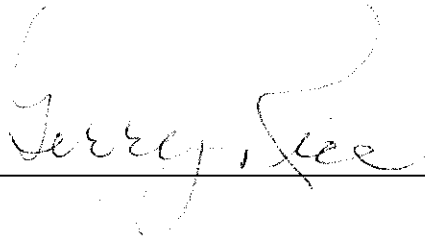
CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **ORDER GRANTING PLAINTIFF'S MOTION FOR PROTECTIVE ORDER** was sent via U.S.mail, pre-paid postage on the 8TH day of February, 2005, to:

Scott M. Petersen
David N. Kelley
FABIAN & CLENDENIN
215 South State Street, 12th Floor
Salt Lake City, Utah 84111
Facsimile: 596-2814

The undersigned further certifies that a copy of the foregoing **ORDER GRANTING PLAINTIFF'S MOTION FOR PROTECTIVE ORDER** was sent via U.S.mail, pre-paid postage on the 8th day of February, 2005, to:

Todd C. Emerson
SKYWEST AIRLINES,
444 South River Road
St. George, Utah 84790
Facsimile: (435) 634-3505



United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00179

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Erik Strindberg, Esq.
STRINDBERG SCHOLNICK & CHAMNESS LLC
44 EXCHANGE PL 2ND FL
SALT LAKE CITY, UT 84111
EMAIL

Todd C. Emerson, Esq.
SKYWEST AIRLINES
444 S RIVER RD
ST GEORGE, UT 84790
EMAIL

Scott M. Petersen, Esq.
FABIAN & CLENDENIN
215 S STATE STE 1200
PO BOX 510210
SALT LAKE CITY, UT 84151
EMAIL

United States District Court
District of Utah

Markus B. Zimmer
Clerk of Court

Louise S. York
Chief Deputy

February 14, 2005

Mr. Patrick Fisher, Clerk United
States Court of Appeals for the
Tenth Circuit
1823 Stout Street Denver, CO
80257

—

RE: 05-4013
VanHouten v. Sansone
Lower Docket: 1:02-CV-165-PGC

Dear Clerk of Court:

Please be advised that the record is complete for the purposes of appeal.

Sincerely,

Markus B. Zimmer, Clerk

By: /S
Aaron Paskins
Appeal's Clerk

cc: Counsel of Record

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:02-cv-00165

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Steven C. Russell, Esq.
AFFORDABLE LEGAL ADVOCATES
180 S 300 W STE 170
SALT LAKE CITY, UT 84101
EMAIL

Peggy E. Stone, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

Debra J. Moore, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

Mr. Barry G. Lawrence, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

United States District Court
District of Utah

Markus B. Zimmer
Clerk of Court

Louise S. York
Chief Deputy

February 14, 2005

Mr. Patrick Fisher, Clerk
United States Court of Appeals
for the Tenth Circuit
1823 Stout Street
Denver, CO 80257

RE: RECORD ON APPEAL
USA v. Mosqueda-Lopez -- 04-4301
Lower Docket: 2:04-CR-135-DAK

Dear Mr. Fisher:

We hand you herewith, by FedEx mail, Volumes I-IV of the record on appeal in the above-referenced case.

Volume:	Contents:
I.	Consisting of designated documents 1, 39-40, 52, 65-70.
II.	Consisting of designated transcript for 07/20/04(Change of Plea).
III.	Consisting of designated transcript for 12/02/04(Sentencing).
IV.	Consisting of SEALED pre-sentence report.

Please acknowledge receipt of this record on appeal by signing the enclosed copy of this letter and returning it to my attention.

Sincerely,

Markus B. Zimmer, Clerk

By: /S
Aaron Paskins
Appeals Clerk

cc: Counsel of Record

FedEx Mail Receipt No.: 7928 4628 6277

ACKNOWLEDGMENT OF RECEIPT:

Received by: _____

Date: _____

74

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00135

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

Michael S. Lee, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

Mr Richard P Mauro, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

Scott C. Williams, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

R. Willis Orton (2484)
Jason W. Beutler (8933)
KIRTON & McCONKIE
1800 Eagle Gate Tower
60 East South Temple
P.O. Box 45120
Salt Lake City, Utah 84145-0120
Telephone: (801) 328-3600

David E. Spalten (admitted pro hac vice)
Merritt & Tenney LLP
Suite 500
200 Galleria Parkway, N.W.
Atlanta, Georgia 30339

Attorneys for Defendant
World Marketing Alliance, Inc.

RECEIVED CLERK
2005 FEB -9 P 6:49
U.S. DISTRICT COURT
DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FRANKLIN COVEY CLIENT SALES,
INC., a Utah corporation,

Plaintiff,

vs.

WORLD MARKETING ALLIANCE, INC.,
a Georgia corporation; and WORLD
FINANCIAL GROUP, INC., a Delaware
corporation,

Defendants.

**ORDER GRANTING DEFENDANT
WORLD MARKETING ALLIANCE'S
MOTION FOR LEAVE TO FILE
LENGTHY MEMORANDUM**

Civil No. 2:02 CV 270 B


Honorable Dee Benson

439

IT IS HEREBY ORDERED that Defendant World Marketing Alliance, Inc's ("WMA") Motion for Leave to File Lengthy Memorandum is granted. WMA may file a Motion for Judgment as a Matter of Law or, Alternatively, For a New Trial of no more than 20 pages in length.

DATED this 11 day of February, 2005.

BY THE COURT

By 
Dee Benson
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2005, I caused a true and correct copy of the foregoing **ORDER GRANTING DEFENDANT WORLD MARKETING ALLIANCE'S MOTION FOR LEAVE TO FILE LENGTHY MEMORANDUM** to be served on the following in the following manner:

Richard Burbidge
Jefferson W. Gross
BURBIDGE & MITCHELL
Parkside Tower, Suite 920
215 South State Street
Salt Lake City, Utah 84111

☐ Hand-delivered
☐ First Class Mail
☒ Telefacsimile
☐ Other

Sean N. Egan
136 South Main Street
Kearns Building, Suite 408
Salt Lake City, Utah 84101

☐ Hand delivered
☐ First Class Mail
☒ Telefacsimile
☐ Other

Dlga Medina

United States District Court
for the
District of Utah
February 14, 2005

kvs

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00270

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

David E. Spalten, Esq.
MERRITT & TENNEY LLP
200 GLLERIA PARKWAY STE 500
ATLANTA, GA 30339-3151

R. Willis Orton, Esq.
KIRTON & MCCONKIE
60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
EMAIL

Sean N. Egan, Esq.
136 S MAIN STE 408
KEARNS BLDG
SALT LAKE CITY, UT 84101-3636
EMAIL

Mr. Richard D Burbidge, Esq.
BURBIDGE & MITCHELL
215 S ST ST STE 920
SALT LAKE CITY, UT 84111
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED
2005 FEB 11 P 2:40

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CASEY WAYNE CRANDALL,

Defendant.

B7
DEPUTY CLERK

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

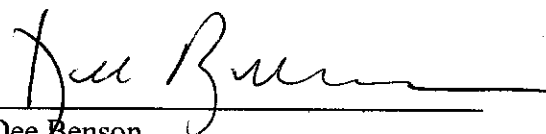
Case No. 2:03-CR-992 DB

Judge Dee Benson

Before the Court is the Report and Recommendation of magistrate judge Samuel Alba, issued November 19, 2004. At issue is Defendant's motion to suppress statements made by Defendant to officers after entering Defendant's home as well as statements made by Defendant after he had been placed in police custody. The magistrate judge recommended the motion be denied, and neither party has filed an objection to the Report and Recommendation.

Having reviewed all relevant materials, including the reasoning set forth in the report, the Court agrees with the magistrate judge. Accordingly, the Court ADOPTS the Report and Recommendation in its entirety, including the findings of fact and legal analysis given by the magistrate judge in the Report and Recommendation. IT IS SO ORDERED.

DATED this 10th day of February, 2005.


Dee Benson
United States District Judge

31

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00992

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Trina A Higgins, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Viviana Ramirez, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CASEY LOPEZ,

Defendant.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

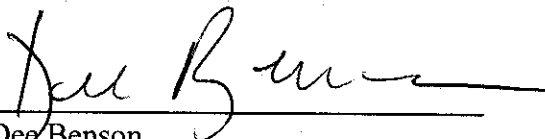
Case No. 2:04-CR-162 DB

Judge Dee Benson

Before the Court is the Report and Recommendation of magistrate judge Samuel Alba, issued November 19, 2004. At issue is Defendant's motion to suppress evidence obtained during a traffic stop where Defendant was ordered out of his vehicle to answer questions so that a police dog could circle Defendant's car to conduct a drug sniff. The magistrate judge recommended the motion be denied, and neither party has filed an objection to the Report and Recommendation.

Having reviewed all relevant materials, including the reasoning set forth in the report, the Court agrees with the magistrate judge. Accordingly, the Court ADOPTS the Report and Recommendation in its entirety, including the findings of fact and legal analysis given by the magistrate judge in the Report and Recommendation. IT IS SO ORDERED.

DATED this 11th day of February, 2005.


Dee Benson
United States District Judge

39

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00162

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jonathan D. Yeates, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mark S. Kouris, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH ~~FEDERAL DISTRICT COURT, DISTRICT OF UTAH~~

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

CHRISTOPHER JAMESON

Defendant(s).

FEB 11 2005

MARKUS B. ZIMMER, CLERK
BY Case No. 2:04-CR-693 TS
DEPUTY CLERK

ORDER APPOINTING COUNSEL

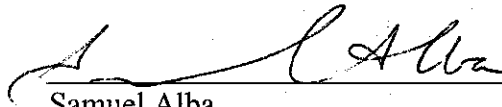
The defendant, CHRISTOPHER JAMESON requested the appointment of counsel on 2/11/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

IT IS HEREBY ORDERED the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

DATED this 11th day of February, 2005.

BY THE COURT:



Samuel Alba
Chief Magistrate Judge

6

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00693

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Trina A Higgins, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

CHRISTOPHER JAMESON

Case Number:

FILED 3:04 CB 693 TS

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a federal offense, state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____

MARKUS B. ZIMMER, CLERK
BY
DEPUTY CLERK

FEB 11 2005

- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

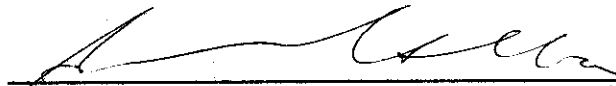
I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

PRIOR CRIMINAL HISTORY

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 11, 2005


Signature of Judicial Officer
CHIEF MAGISTRATE JUDGE SAMUEL A. ALBA
Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00693

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Trina A Higgins, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

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EMAIL

FILED
CLERK OF DISTRICT COURT

2005 FEB 11 P 3:17

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

HUGO ROMERO-CRUZ

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-62 DAK

The above-entitled action came on for pretrial conference **February 3, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **4/11/05**, (2 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dale A. Kimball by **4/8/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

15

3. Pretrial motions are to be filed by: 2/24/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/28/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Dale A. Kimball's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes X No Language Spanish

DATED this 3 day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00062

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Robert A. Lund, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK U.S. DISTRICT COURT

2005 FEB 11 P 3:17

SIXTH JUDICIAL CIRCUIT

BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

STUART WALKER

Defendant(s),

PRETRIAL ORDER PURSUANT

TO RULE 17.1 F.R.Cr.P.

Case No. 2:04-CR-794 DAK

The above-entitled action came on for pretrial conference February 4, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/13/05, (2 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dale A. Kimball by 4/12/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

26

3. Pretrial motions are to be filed by: 2/25/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/30/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Dale A. Kimball's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 4 day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00794

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Ms. Barbara Bearnson, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Robert L. Steele, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Mr. Richard G MacDougall, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

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EMAIL

FILED
CLERK OF DISTRICT COURT
FEB 11 P 3:16
DISTRICT OF UTAH
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DALE LIVINGSTON, tms

Plaintiff,

v.

TROY STAKER,

Defendant.

Case No. 2:04-CV-565 DAK

REPORT AND RECOMMENDATION

Dale Livingston, tms, is a pro se plaintiff who filed a complaint pursuant to 42 U.S.C. § 1983¹ against Defendant, Troy Staker, on June 18, 2004. (File entry #1.) The case was assigned to United States District Judge Dale A. Kimball, who subsequently referred it to United States Magistrate Judge Samuel Alba, pursuant to 28 U.S.C. § 636(b)(1)(B). (File entry #6.)

FACTUAL BACKGROUND

Plaintiff claims to be a "religious corporation sole" known as "The Marred Servant" or "tms." (File entry #1, at 5.) Plaintiff's son-in-law, Jeffrey Randal Smit, was allegedly employed by Plaintiff corporation while on probation related to a

¹Plaintiff's complaint states a claim under "42 U.S.C. § 1943." The court has interpreted that claim to actually be brought pursuant to 42 U.S.C. § 1983, as such an interpretation makes more sense in light of Plaintiff's allegations.

24

state criminal conviction. (File entry #1, at 6.) Defendant Troy Staker was assigned as Mr. Smit's probation officer. (File entry #1, at 6.) Plaintiff alleges that on August 1, 2003, Defendant informed Mr. Smit that his probation required he find a source of employment other than with Plaintiff corporation. (File Entry #1, at 8.) Plaintiff alleges that Defendant subsequently told Plaintiff that Mr. Smit was required to find other employment because Defendant "did not approve of [Plaintiff's] religion." (File entry #1, at 9.) Plaintiff claims he responded by threatening to sue Defendant. (File entry #1, at 9.) As a result, Plaintiff claims, *inter alia*, Defendant "began to engage in vengeful acts against [Mr. Smit]" (File entry #1, at 10), including: revoking Mr. Smit's parole; imposing \$50,000 bail; "orchaestrating" an arrest of Mr. Smit; and invoking excessively high bail for the arrest. (File entry #1, at 18.)

Additionally, Plaintiff claims Defendant's actions caused Mr. Smit to flee to Hurricane, Utah, "in gripping fear of persecution," where he was subsequently arrested on an outstanding warrant. (File entry #1, at 20.) Plaintiff alleges that Mr. Smit was injured in the course of this arrest through the discharge of a TASER gun by law enforcement, was subsequently placed in maximum security, and again was subjected to an "excessive bail amount." (File entry #1, at 19-22.) Plaintiff

claims these circumstances all resulted, directly or indirectly, from Defendant's actions. (File entry #1, at 22.) Plaintiff alleges that these acts directed at Mr. Smit were "thereby against" Plaintiff in a manner similar to the suffering endured by Jesus Christ during the trial of John the Baptist. (File entry #1, at 26-28.) Additionally, Plaintiff claims injury due to Plaintiff's inability to pay bail amounts established for Mr. Smit. (File entry #1, at 24.)

PROCEDURAL BACKGROUND

Subsequent to his initial filing, Plaintiff filed a petition to amend his original complaint on July 16, 2004. (File entry #5.) On July 27, 2004, Defendant filed a motion with the court, along with a supporting memorandum, for dismissal of the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as well as an opposition to Plaintiff's motion for leave to amend Plaintiff's original complaint. (File entries #7-9.) On August 10, 2004, the court set a hearing regarding Plaintiff's motion to amend for August 23, 2004. (File entry #10.) On August 11, 2004, Plaintiff filed a motion for enlargement of time regarding the August 23, 2004 hearing. (File entry #11.) On August 18, 2004, the court granted Plaintiff's motion for enlargement of time and scheduled a hearing for September 23, 2004, regarding the motion for leave to amend Plaintiff's original complaint. (File entry #12.) On September

23, 2004, Plaintiff filed a response to Defendant's motion to dismiss, along with a 31-page supporting memorandum. (File entries #13-14.) Also on September 23, 2004, the court held a hearing regarding Plaintiff's motion for leave to file an amended complaint. At the conclusion of this hearing, after questioning Plaintiff regarding the content of his proposed amended complaint, the court continued the matter to November 9, 2004, and scheduled oral arguments for the same day. (File entry #15.) Plaintiff was required to file his amended complaint with the court no later than October 14, 2004, and was cautioned by the court not to be delinquent. (File entry #15.) On October 14, 2004, Plaintiff filed a motion for a continuance regarding his amended complaint rather than the anticipated complaint. (File entry #16.) On October 21, 2004, the court granted Plaintiff's motion for a continuance and established December 14, 2004, as Plaintiff's final deadline for filing his amended complaint. (File entry #17.) On November 10, 2004, the court sent notice to both Plaintiff and Defendant for a hearing regarding the motion to amend Plaintiff's original complaint. (File entry #18.) On December 14, 2004, the final deadline for filing his amended complaint, Plaintiff filed with the court a "Motion Noticing Court of Conditions for Commencement of Case" rather than the anticipated amended complaint. (File entry #19.) Oral argument regarding Plaintiff's motion to amend his original complaint was

scheduled by the court for January 10, 2005. (File entry #18.) At the January 10, 2005 hearing, Plaintiff did not appear and the court denied Plaintiff's motion to amend his original complaint. (Official Transcript of January 10, 2005 Proceedings, at 4.) The court then scheduled oral arguments regarding Defendant's motion to dismiss for January 24, 2005. (File entry #22.) Both parties appeared and argued their positions at the January 24, 2005 hearing.

ANALYSIS

Because Plaintiff is proceeding pro se, the court construes his pleadings liberally, holding them to a less stringent standard than formal proceedings drafted by lawyers. See *Riddle v. Mondragon*, 83 F.3d 1197, 1202 (10th Cir. 1996) (citing *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)); accord *Gaither v. Aetna Life Ins. Co.*, 388 F.3d 759, 778 (10th Cir. 2004). Nevertheless, even construing all of Plaintiff's allegations "in the light most favorable to [Plaintiff]," the court concludes that Defendant's motion to dismiss should be granted. *Riddle*, 83 F.3d at 1202.

Defendant argues that Plaintiff has failed to state a claim upon which relief can be granted. See Fed. R. Civ. P. 12(b)(6). Defendant bases this argument, in part, on the following three arguments: (1) that Plaintiff has no right to sue under 18 U.S.C. § 241 and § 245, (2) that Plaintiff lacks standing to sue for the

deprivation of Mr. Smit's legal rights, and (3) that Plaintiff has not stated claims under 42 U.S.C. § 1985(3) and § 1986.

Defendant's motion to dismiss under Fed. R. Civ. P. 12(b)(6) "admits all well pleaded facts in [Plaintiff's] complaint as distinguished from conclusory allegations." *Mitchell v. King*, 537 F.2d 385, 386 (10th Cir. 1976). Moreover, the court must "accept[] the well pleaded allegations in the complaint as true and constru[e] them in the light most favorable to the plaintiff." *Beck v. City of Muskogee Police Dept.*, 195 F.3d 553, 556 (10th Cir. 1999) (quoting *Yoder v. Honeywell, Inc.*, 104 F.3d 1215, 1224 (10th Cir. 1997) (internal quotations omitted)).

Plaintiff's claims are somewhat difficult to determine from the submitted complaint, though they appear to be numerous. Plaintiff appears to claim that Defendant violated Plaintiff's rights protected under 18 U.S.C. § 241 and § 245. Additionally, Plaintiff alleges violations of his First, Fourth, Fifth, and Eighth Amendment rights.

First, Plaintiff bases a portion of his claims on violations of 18 U.S.C. § 241 and 18 U.S.C. § 245. (File Entry #1, at 1, 10, 16, 25). The court recommends that these claims be dismissed because these criminal statutes do not provide for private civil causes of action. See *Kelly v. Rockefeller*, 69 Fed. Appx. 414, 415-416 (10th Cir. 2003). More particularly, the Tenth Circuit has noted that "§ 245 explicitly reserves the right

of prosecution to government officials." *Id.* at 416 (emphasis added). Moreover, the United States Supreme Court has established that the government retains broad discretion regarding prosecution of criminal offenses. "[T]he decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in [the prosecutor's] discretion." *Wayte v. United States*, 470 U.S. 598, 607, (1985) (emphasis added) (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) (internal quotations omitted)).

Second, the court agrees with Defendant regarding Plaintiff's lack of standing for third party claims. The Tenth Circuit has established that "'a plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" *Hackford v. Babbitt*, 14 F.3d 1457, 1465 (10th Cir. 1994) (quoting *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 474 (1982)).

Accordingly, the court recommends Plaintiff's Fourth Amendment claim, believed by the court to reference alleged entry and search of a premises in Hurricane, Utah, be dismissed because this claim involves an alleged injury to Plaintiff's employee, Mr. Smit. Similarly, the court recommends Plaintiff's Fifth Amendment claim, which the court believes to refer to bail amounts established surrounding Mr. Smit's detention, also be

dismissed due to lack of standing on the part of Plaintiff. Additionally, the court recommends Plaintiff's Eighth Amendment claim, apparently referring to use of a TASER gun by law enforcement while arresting Mr. Smit in Hurricane, Utah, alleged by Plaintiff to amount to torture, be dismissed for lack of standing by Plaintiff. The court recommends that each of these claims be dismissed because Mr. Smit, not Plaintiff, is the party whose rights and interests are asserted.

Plaintiff also alleges a violation of the First Amendment. In support of this allegation, Plaintiff describes being "forced to endure and to suffer, from the pains of seeing and knowing that Plaintiff's Employee has been caused to suffer, and to suffer excessively and to a torturous degree" (File entry #1, at 28.) Plaintiff has provided no evidence to support a claim that *Plaintiff's* rights were violated through Defendant's actions. Moreover, Plaintiff has noted in his own pleadings that "acts of hatred and revenge" allegedly initiated by Defendant were "against *Plaintiff's Employee*," and that such acts resulted in Plaintiff's suffering "through *Plaintiff's Employee* as a victim." (File entry #1, at 24) (emphasis added). Once again, rather than asserting "his own legal rights," Plaintiff attempts "to rest his claim to relief on the legal rights or interests of

[a] third part[y]," Mr. Smit.² *Hackford*, 14 F.3d at 1465.

As noted by Defendant, the United States Supreme Court has established that the "irreducible constitutional minimum of standing contains three elements": 1) injury in fact, 2) a causal connection between the injury and the conduct complained of, and 3) the likelihood that the injury will be redressed by a favorable ruling. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Based upon the *Lujan* requirements for standing and the analysis provided above regarding third party claims, the court recommends Plaintiff's First Amendment claim be dismissed due to lack of standing.

Third, Defendant argues that Plaintiff's claims regarding violations of 42 U.S.C. § 1985(3) and § 1986 are flawed because these sections "appl[y] only to conspiracies motivated by some racial, or otherwise class-based, invidiously discriminatory animus." (File entry #8, at 7 (quoting *Tilton v. Richardson*, 6 F.3d 683, 686 (10th Cir. 1993)).) In fact, *Tilton* establishes that a claim under § 1985(3) regarding a non-racially motivated claim must plead:

²At oral argument, Plaintiff seemed to allege a violation of his right to contract as support for his First Amendment claim. (Official Transcript of January 24, 2005 Proceedings, at 8.) However, with the dismissal of Plaintiff's federal claims, the court lacks jurisdiction over any such state claim. Therefore, the court declines to address this apparently asserted, though undeveloped claim.

1. that the conspiracy is motivated by a class-based invidiously discriminatory animus; and
2. that the conspiracy is aimed at interfering with rights that by definition are protected against private, as well as official, encroachment.

Tilton at 686. The *Tilton* court also noted that First Amendment rights are not protected against private infringement, and thus are not protected by a proper § 1985(3) pleading. Plaintiff has not provided information in his pleadings to support the presence of a conspiracy and thus has not met the standard for pleading required by the *Tilton* court. Therefore, Plaintiff's 42 U.S.C. § 1985(3) complaint fails. Accordingly, Plaintiff's § 1986 allegation must also fail, as such a claim requires a successful § 1985 claim as a prerequisite. See 42 U.S.C. § 1986.

As noted above, Tenth Circuit precedent requires this court to engage in a liberal reading of allegations brought by pro se litigants. See *Riddle*, 83 F.3d at 1202. However, this court is not charged with the obligation to craft legal theories or factual allegations in support of a pro se litigant. See *Hall*, 935 F.2d at 1110 (explaining that conclusory allegations without supporting factual averments are insufficient to establish a claim on which relief can be based). Additionally, the liberal construction of pro se pleadings provided by the court does not relieve Plaintiff of the requirement to comply with Fed. R. Civ.

P. 12(b)(6). See *Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994) (explaining the liberal construction of pro se pleadings required of the court does not excuse the obligation of any litigant to comply with the Federal Rules of Civil and Appellate Procedure (emphasis added)). Although Plaintiff appears to have asserted numerous claims in his complaint, as discussed above, each of those claims is significantly and fatally flawed in some way. Accordingly, the court concludes that Plaintiff's complaint fails to state a claim upon which relief may be granted. As such, the court recommends that Defendant's motion to dismiss be granted. See Fed. R. Civ. P. 12(b)(6).

Finally, in his prayer for relief, Plaintiff requests that this court "[g]rant an immediate notice for a stay of pertinent State proceedings" (File entry #1, at 30.) The United States Supreme Court has established a "fundamental policy against federal interference with state criminal prosecutions" without the threat of "great and immediate," irreparable injury. *Younger v. Harris*, 401 U.S. 37, 46 (1971). This court finds no evidence that the subjects of the referenced state proceedings are threatened with any injury other than that incidental to a criminal proceeding brought lawfully and in good faith, and

therefore declines Plaintiff's invitation to intervene. See Younger at 47.

CONCLUSION

Based upon the above analysis, the court concludes that Plaintiff has failed to state a claim upon which relief can be granted. Therefore, **IT IS RECOMMENDED** that Defendant's motion to dismiss (File Entry #7) be **GRANTED**.

Copies of the foregoing Report and Recommendation are being mailed to the parties who are hereby notified of their right to object to the same. The parties are further notified that they must file any objections to the Report and Recommendation, with the clerk of the district court, pursuant to 28 U.S.C. § 636(b), within ten (10) days after receiving it. Failure to file objections may constitute a waiver of those objections on subsequent appellate review.

DATED this 11th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Samuel Alba', is written over a horizontal line.

Samuel Alba
United States Magistrate Judge

blk

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00565

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dale Livingston
3509 E KINGS HILL DR
SALT LAKE CITY, UT 84121

Scott D. Cheney, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
LITIGATION UNIT
160 E 300 S 6TH FL
PO BOX 140856
SALT LAKE CITY, UT 84114-0856
EMAIL

STEVEN B. KILLPACK, Federal Defender (#1808)
WENDY M. LEWIS, Assistant Federal Defender (#5993)
Utah Federal Defender Office
46 West 300 South, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010

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FEB 11 P 3:23
DISTRICT OF UTAH
BY
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FEB 11 2005

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

MICHAEL BLAKE,

Defendant.

:

:

:

:

:

ORDER TO CONTINUE
JURY TRIAL

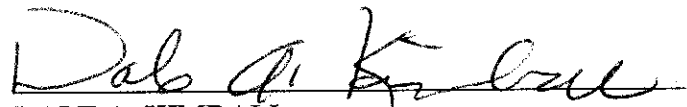
Case No. 2:04CR-676DAK

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial previously scheduled for February 25, 2005, be stricken. Pursuant to 18 U.S.C. § 3161(h), the court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant to a speedy trial. The time of the delay shall constitute excludable time under the Speedy Trial Act.

Dated this 11th day of February, 2005.

BY THE COURT:



DALE A. KIMBALL

United States District Court Judge

35

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00676

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Robert E. Steed, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. Stephen R McCaughey, Esq.
10 W BROADWAY STE 650
SALT LAKE CITY, UT 84101
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

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CLERK, U.S. DISTRICT COURT

2005 FEB 11 P 3:23

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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FEB 11 2005

U.S. DISTRICT COURT

BY: _____
DEPUTY CLERK
Plaintiff

v.

In re Medical Waste Services Antitrust Litig.

Defendant.

*
* CASE NO. 03-MDL 1546 DAK
*
* Appearing on behalf of:
* Plaintiff Sorensen
*
* (Plaintiff/Defendant)
*

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Joann Shields, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: February, 20 05

(Signature of Local Counsel)

(Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Helen I. Zeldes, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) ☒ a non-resident of the State of Utah or, (ii) ☐ a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Joann Shields as associate local counsel.

Date: February 7th, 20 05

Check here ☒ if petitioner is lead counsel.

(Signature of Petitioner)

FEE PAID

Name of Petitioner: Helen I. Zeldes Office Telephone: 619/231-1058
(Area Code and Main Office Number)

Business Address: Lerach Coughlin Stoia Geller Rudman & Robbins, LLP

(Firm/Business Name)
401 B Street, Ste. 1600 San Diego CA 92101
Street City State Zip

151

BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
California Supreme Court	California	6/5/02
Hawaii Supreme Court	Hawaii	11/03/00
Southern District of California	San Diego, CA	2002
Central District of California	Los Angeles, CA	4/24/04
Eastern District of California	Sacramento, CA	4/2/04
Northern District of California	San Francisco, CA	4/6/04

(If additional space is needed, attach separate sheet.)

PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

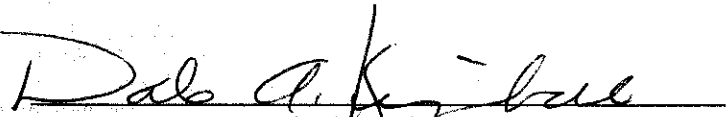
CASE TITLE	CASE NUMBER	DATE OF ADMISSION

(If additional space is needed, attach a separate sheet.)

ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 11th day of February, 2005.


U.S. District Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-md-01546

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Nicholas Koluncich III, Esq.
6804 FOURTH ST NW
LOS RANCHOS DE ALBUQ, NM 87107
EMAIL

Joann Shields, Esq.
ATKIN & SHIELDS PC
136 S MAIN SIXTH FL
SALT LAKE CITY, UT 84101
EMAIL

Bruce D. Hall, Esq.
RODEY DICKASON SLOAN AKIN & ROBB PA
PO BOX 1888
ALBUQUERQUE, NM 87103

Henry M. Bohnhoff, Esq.
RODEY DICKASON SLOAN AKIN & ROBB PA
PO BOX 1888
ALBUQUERQUE, NM 87103
EMAIL

Jordan Green, Esq.
FENNEMORE CRAIG PC
3003 N CENTAL AVE STE 2600
PHOENIX, AZ 85012-2913
EMAIL

Timothy J. Burke, Esq.
FENNEMORE CRAIG PC
3003 N CENTAL AVE STE 2600
PHOENIX, AZ 85012-2913
EMAIL

Mr. Allan T. Brinkerhoff, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

James S. Jardine, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

Kip B. Shuman, Esq.
DYER & SHUMAN LLP
801 E 17TH AVE
DENVER, CO 80218-1417

Christopher A. Holland, Esq.
SUTIN THAYER & BROWNE
PO BOX 1945
ALBUQUERQUE, NM 87103

Norman S. Thayer, Esq.
SUTIN THAYER & BROWNE
PO BOX 1945
ALBUQUERQUE, NM 87103
EMAIL

Mr. Raymond J Etcheverry, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Charles A. Blanchard, Esq.
PERKINS COIE BROWN & BAIN
2901 N CENTRAL AVENUE
PO BOX 400
PHOENIX, AZ 85001-0400

Michael S. McCarthy, Esq.
FAEGRE & BENSON
1700 LINCOLN ST
STE 3200 WELLS FARGO CENTER
DENVER, CO 80203-4004

Michael J. Beck
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
THURGOOD MARSHALL FEDERAL JUDICIARY BLDG
ONE COLUMBUS CIRCLE NE
RM G-255 NORTH LOBBY
WASHINGTON, DC 20002-8004

Mr. Andrew H Stone, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
170 S MAIN ST STE 1500
PO BOX 45444
SALT LAKE CITY, UT 84145-0444
EMAIL

David R. Scott, Esq.
SCOTT & SCOTT
PO BOX 192

108 NORWICH AVE
COLCHESTER, CT 06415
EMAIL

William J. Doyle II, Esq.
LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
401 B ST STE 1700
SAN DIEGO, CA 92101
EMAIL

Helen I. Zeldes, Esq.
LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
401 B ST STE 1700
SAN DIEGO, CA 92101

Bonny E. Sweeney, Esq.
LERACH COUGHLIN STOIA GELLER RUDMAN & ROBBINS LLP
401 B ST STE 1700
SAN DIEGO, CA 92101
EMAIL

Jack Landskroner, Esq.
LANDSKRONER GRIECO
1360 W 9TH ST STE 200
CLEVELAND, OH 44077
EMAIL

Francis Joseph Balint Jr., Esq.
BONNETT FAIRBOURN FRIEDMAN & BALINT, P.C.
2901 N CENTRAL AVE, STE 1000
PHOENIX, AZ 85012
EMAIL

Bernard Persky, Esq.
GOODKIND LABATON RUDOFF & SUCHAROW LLP
100 PARK AVE
NEW YORK, NY 10017

Rosemary Joy Shockman, Esq.
SHOCKMAN LAW OFFICE
8170 N 86TH PL STE 102
SCOTTSDALE, AZ 85258

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2005 FEB 11 P 3:23

DISTRICT OF UTAH

BY: _____
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MICHAEL L. LARSEN (4069)
C. KEVIN SPEIRS (5350)
CATHERINE AGNOLI (6161)
JULIETTE P. WHITE (9616)
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, Utah 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

Attorneys for Plaintiff Altiris, Inc

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FEB 11 2005

U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

ALTIRIS, INC., a Utah corporation,
Plaintiff,

v.

SYMANTEC CORP., a Delaware corporation,
Defendant.

**STIPULATED AMENDMENTS TO
SCHEDULING ORDER**

2:99CV 0013K
(Consolidated with 2:99CV-1007)

Judge Dale A. Kimball

Magistrate Judge Sam Alba

Based on the recent Notices setting the dates and times for the Final Pretrial Conference and the trial in this case, plaintiff Altiris, Inc. and defendant Symantec Corporation, through counsel, stipulate to and respectfully submit the following proposed Amendments to the Scheduling Order previously entered in this case on March 10, 2004:

I. EXPERT REPORTS

1. Reports from experts retained under Rule 26(a)(2) will be submitted on:
 - a. Reports on issues on which the party bears the burden of proof: **July 22, 2005.**
 - b. Rebuttal reports: **August 26, 2005.**

II. DISCOVERY

2. All fact discovery will be completed no later than **July 1, 2005.**
3. All expert discovery will be completed no later than **September 15, 2005.**

III. OTHER MATTERS

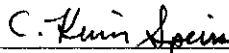
4. The cutoff date for filing dispositive or potentially dispositive motions is **September 30, 2005.**
5. The Final Pretrial Conference will be on **January 9, 2006.**
6. Pretrial disclosures on the issues on which the respective party bears the burden of proof pursuant to Federal Rule of Civil Procedure 26(a)(3) are due from plaintiff and defendant on **December 2, 2005.** Disclosures in response to those respective disclosures are due on **December 9, 2005.**
7. Objections to any of those disclosures under Rule 26(a)(3) will be due on **December 21, 2005.**
8. Motions in limine are due on **December 16, 2005.** Responses to motions in limine are due on **December 23, 2005.**

9. This case will be tried on **January 23, 2006**. The length of trial is currently estimated at (10) ten days.

ENTERED on this 11th day of February, 2005.


HONORABLE DALE A. KIMBALL
United States District Judge

Approved as to form:


C. KEVIN SPEIRS
CATHERINE AGNOLI
JULIETTE P. WHITE
PARSONS BEHLE & LATIMER

Attorneys for Plaintiff Altiris, Inc


MARK F. JAMES
HATCH & JAMES

ROBERT T. HASLAM
ROBERT D. FRAM
S. ELIZABETH MITCHELL
ANDREW BYRNES
HELLER EHRMAN WHITE & McAULIFFE LLP

Attorneys for Defendant Symantec Corporation

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:99-cv-00013

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mark F James, Esq.
HATCH JAMES & DODGE
10 W BROADWAY STE 400
SALT LAKE CITY, UT 84101
EMAIL

Robert Haslam, Esq.
HELLER EHRMAN WHITE & MCAULIFFE
275 MIDDLEFIELD RD
MENLO PARK, CA 94025

Lillian C. Henry, Esq.
HELLER EHRMAN WHITE & MCAULIFFE
333 BUSH ST STE 3100
SAN FRANCISCO, CA 94104

Catherine Agnoli, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Mr. C. Kevin Speirs, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Kevin Meek, Esq.
BAKER BOTTS LLP
2001 ROSS AVE
DALLAS, TX 75201-2980
EMAIL

L. Gene Spears, Esq.
BAKER BOTTS LLP
ONE SHELL PLAZA
910 LOUISIANA

HOUSTON, TX 77002

Scott F. Partridge, Esq.
BAKER BOTTS LLP
ONE SHELL PLAZA
910 LOUISIANA
HOUSTON, TX 77002
EMAIL

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2005 FEB 14 P 2:34

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: 
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

SHERRY ANN CANALES

Defendant(s),

PRETRIAL ORDER PURSUANT
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05-CR-28 TS

The above-entitled action came on for pretrial conference **February 2, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **3/28/05**, (10 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by **3/25/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

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3. Pretrial motions are to be filed by: 2/25/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 3/14/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are:

9. Interpreter Needed: Yes ☐ No ☒ Language _____

DATED this 2 day of February, 2005.

BY THE COURT:



David Nuffer
Magistrate Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00028

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Veda M. Travis, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Ms. Deirdre A Gorman, Esq.
205 26TH ST STE 32
OGDEN, UT 84401
EMAIL

Ms. Candice A Johnson, Esq.
10 W BROADWAY #210
SALT LAKE CITY, UT 84111
EMAIL

Julie George, Esq.
PO BOX 112338
29 S STATE STE 7
SALT LAKE CITY, UT 84147
EMAIL

Mark J. Gregersen, Esq.
3855 S 500 W STE M
SALT LAKE CITY, UT 84115
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Gregory W. Stevens, Esq.
2825 COTTONWOOD PKWY STE 500
SALT LAKE CITY, UT 84121
EMAIL

Mr. Manny C Garcia, Esq.
150 S 600 E STE 5-C
SALT LAKE CITY, UT 84102
EMAIL

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

Mr Richard P Mauro, Esq.
43 E 400 S
SALT LAKE CITY, UT 84111
EMAIL

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REED L. MARTINEAU (A2106)
REX E. MADSEN (A2052)
SHAWN E. DRANEY (A4026)
RICHARD A. VAZQUEZ (A9128)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Defendants 59.87 Acres of Land, Doyle and
Mark Wilson Farm
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Telecopy: (801) 363-0400

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

59.87 ACRES OF LAND, More or Less,
Situated in Wasatch County, State of Utah;
DOYLE AND MARK WILSON FARM, a
partnership; WASATCH COUNTY
TREASURER; and ANY UNKNOWN
OWNERS claiming an interest in said
Parcel Nos. PRRP-24 (Fee),

Defendants.

STIPULATED SCHEDULING ORDER

Case No. 2:02CV-0026K

Judge Dale A. Kimball

The parties have stipulated and agreed to the following scheduling order:

1. The parties will simultaneously exchange with each other all expert reports, other than rebuttal reports, by hand delivery on May 13, 2005.
2. The parties will hand deliver all rebuttal expert reports on or before June 10, 2005.

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3. Discovery cut off shall be June 30, 2005.
4. Dispositions of experts shall be completed by June 30, 2005.
5. All motions in limine, witness lists, and exhibit lists shall be due on or before July 15, 2005.
6. Jury instructions shall be due to the court no later than 1 week before the first day of trial.
7. A 7 day jury trial is scheduled to begin on August 15, 2005 and run through August 23, 2005.

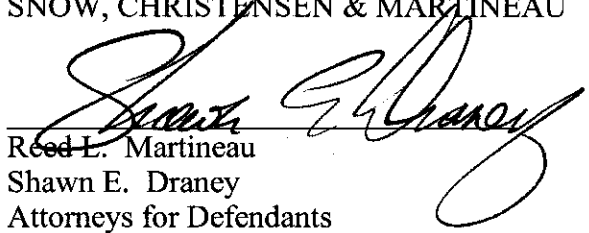
DATED this 11th day of February, 2005.

BY THE COURT:

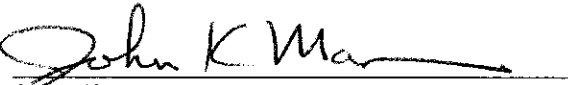

Judge Dale A. Kimball

Approved:

SNOW, CHRISTENSEN & MARTINEAU


Reed L. Martineau
Shawn E. Draney
Attorneys for Defendants

UNITED STATES ATTORNEY'S OFFICE


John K. Mangum
Assistant U.S. Attorney
Attorneys for Plaintiff

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00026

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. John K Mangum, Esq.
US ATTORNEY'S OFFICE

EMAIL

Mr. Reed L Martineau, Esq.
SNOW CHRISTENSEN & MARTINEAU
10 EXCHANGE PLACE
PO BOX 45000
SALT LAKE CITY, UT 84145-5000
EMAIL

LAW OFFICE OF ROSE REILLY, P.C.
ROSALIE REILLY (SBN 6637)
Attorney for Karla J. Prudent
148 South Main, #1
Post Office Box 404
Monticello, Utah 84535
Telephone: (435) 587-3266
Facsimile: (435) 587-3649

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DISTRICT OF UTAH
BY: DEPUTY CLERK
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FEB 11 2005
U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

KARLA J. PRUDENT,

Plaintiff,

v.

**TIM HIGGS, an individual, and
GRAND COUNTY, a governmental
agency,**

Defendants.

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**ORDER ALLOWING THE
WITHDRAWAL OF COUNSEL**

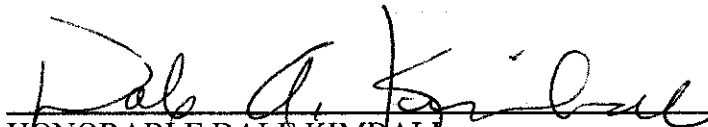
**Case Number: 2:02CV-659K
Honorable Dale A. Kimball**

The Court having considered Counsel's Application for Withdrawal and good cause appearing therefore,

IT IS ORDERED that Rosalie Reilly is allowed to withdraw as counsel for Plaintiff in the above-pending matter.

DATED this 11th day of February 2005.

BY THE COURT:


HONORABLE DALE KIMBALL
UNITED STATES DISTRICT COURT JUDGE

46

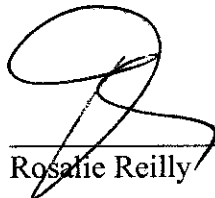
CERTIFICATE OF SERVICE

The undersigned certifies that on February 8, 2005, true and correct copies of the foregoing were mailed, postage prepaid, to the following:

Karla Prudent
1718 Kalina Heights Drive
Moab Utah 84532

Jesse C. Trentadue
Michael W. Homer
John D. Lundy
SUITTER AXLAND
175 South West Temple, Suite 700
Salt Lake City, Utah 84101-1480

Richard Uday
356 E 900 S
Salt Lake City, Utah 84111



Rosalie Reilly

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00659

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Jan N. Allred, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. Jesse C Trentadue, Esq.
SUITTER AXLAND
PO BOX 45101
175 S WEST TEMPLE #700
SALT LAKE CITY, UT 84145-1480
EMAIL

Mr. Samuel D McVey, Esq.
KIRTON & MCCONKIE
60 E S TEMPLE STE 1800
SALT LAKE CITY, UT 84111-1004
EMAIL

Rosalie Reilly, Esq.
148 S MAIN #1
PO BOX 404
MONTICELLO, UT 84535

FILED
CLERK OF DISTRICT COURT
2005 FEB 11 P 3:23
BY: [Signature]
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

TECHNI-GRAPHIC SERVICES, INC.,
a Utah corporation,

Plaintiff,

vs.

MAJESTIC HOMES, INC., a Utah
corporation, DAVID LARSEN, an
individual, ARCHITECTURAL
CONCEPTS, INC., a Utah corporation
and CLARON PERRY, an individual,

Defendants.

MEMORANDUM DECISION
AND ORDER

Case No. 2:02CV923DAK

Judge Dale A. Kimball

This matter is before the court on Defendants Majestic Homes, Inc. and David Larsen's (collectively, "Defendants" or "Majestic") Motion for Summary Judgment. A hearing on the motion was held on January 28, 2005. At the hearing, Defendants were represented by J. Angus Edwards and Plaintiff Techni-Graphic Services, Inc. ("TGS") was represented by Catherine L. Brabson. The court took the motion under advisement. The court has considered carefully the memoranda and other materials submitted by the parties, as well as law and facts relating to the motions. Now being fully advised, the court renders the following Memorandum Decision and Order.

BACKGROUND

Plaintiff Techni-Graphic Services, Inc. ("TGS") brought copyright infringement and unfair competition and false advertising claims against Defendants Majestic Homes, Inc., David

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Larsen, Architectural Concepts, Inc., and Claron Perry for allegedly infringing TGS's copyrights in two architectural plans for single family homes.

TGS has registered copyrights in two architectural plans for single family homes: TGS Plan 1885 and TGS Plan 1725. TGS Plan 1725 is a derivative of TGS Plan 1885. In the summer of 1999, TGS discovered that ACI was selling an architectural plan designated as ACI Plan 1801.¹ TGS alleges that the 1801/1860 Plan is substantially similar to both TGS Plans 1885 and 1725. Thus, TGS, through counsel,² sent two letters, dated August 11, 1999 and August 30, 1999, to Mr. Perry, President of ACI, demanding that ACI cease offering ACI Plan 1801 or consequently TGS would take legal action to enforce its intellectual property rights.

In its letter, TGS also requested that ACI provide it with a list of all of ACI's customers that have purchased ACI Plan 1801. Defendant Majestic Homes had purchased Plan 1801 from ACI. However, ACI did not provide TGS with a list of customers and it appears that TGS did not pursue the matter of customer names any further with ACI.

In 1999, Perry advised Majestic that he had received a letter stating that there was another architect stating that he had a copyrighted plan similar to the ACI Plan 1801 and that rather than fight the claim ACI was going to cease sales of the ACI Plan 1801. ACI did not show Majestic the letter. When Defendant Larsen asked Perry whether Majestic could continue

¹According to the ACI/Perry Defendants, Plan 1801 was originally designated as Plan 1760. Upon recalculation of the square footage of Plan 1760 it was found to be 1801 square feet, not 1760 as originally thought. Thus, ACI Plan 1760 was redesignated as Plan 1801. When ACI's Plan 1801 was built by Defendant Majestic appraisers stated that it had 1860 square feet. Therefore, Defendant Majestic designated ACI Plan 1801 as Majestic Plan 1860. Thus, Plans 1760, 1801, and 1860 appear to be the same plans.

²TGS was represented by Paul C. Oestreich and Thomas Rossa of Trask Britt & Rossa during this period of time.

to purchase the 1500/1560 Plan from ACI, Perry stated that the letter only mentioned ACI Plan 1801.

In the Spring of 2001, TGS discovered that Majestic had obtained ACI Plan 1500, which is also known by Majestic as the 1560 Plan. Defendant Larsen told TGS that Majestic's customers had ordered homes from Majestic using the 1500/1560 Plan. But, when TGS notified Majestic that the 1500/1560 Plan allegedly infringed a copyright, it also stated that it did not have a plan in that range of square footage to sale to Majestic. Larsen delivered a 1500/1560 Plan to TGS for use in the preparation of TGS' 1526 Plan. Larsen informed Lunt that he did not know there was a copyright problem with the 1500/1560 Plan because Perry had told him there was only a problem with the 1801/1860 Plan.

After Majestic learned that TGS believed the 1500/1560 Plan Majestic was using to build two homes (Lot 311 and Lot 540 in the Foothills subdivision in Riverton City) was infringing TGS' copyrights, Majestic paid TGS for the TGS plans. Majestic's realtor prepared advertising brochures for homes built using both of the plans. Majestic also built a model home of the 1801/1860 Plan which potential customers could tour.

TGS markets and distributes a "Residential Designs" planbook to potential customers in the Salt Lake valley, and Utah and Davis Counties. The planbook contains abbreviated architectural plans that show the layout of floor plans, rooms, and dimensions including TGS Plans 1885 and 1725. TGS' invoice records show that Majestic Homes bought and paid for a TGS "Residential Designs" planbook on March 3, 1996. The invoice was issued in the name of Majestic Homes and signed by Gary Cannon, a realtor who worked with Majestic Homes on occasion. TGS invoice records also show that approximately one month later, on April 2, 1996,

another Majestic Homes realtor, Gordon Milar, purchased 7 sets and a color rendering of TGS Plan 1885. TGS claims that Milar was the exclusive realtor for Majestic Homes Plan 1860 and Plan 1560. However, Defendant Larsen has submitted an Affidavit stating that neither realtor had the authority to act on behalf of Majestic at that time.

TGS further claims that three months later, in July of 1996, Majestic began constructing a home allegedly using the ACI 1801/1860 Plan. Plans used by Majestic Homes to construct a home for its customers, Tad and Michelle Campbell, were filed with the City of Riverton on or about July 17, 1996, and included the designation "DRAWN BY ARCHITECTURAL CONCEPTS" . . . "MAIN FLOOR PLAN 1760."

TGS seeks to recover damages from Majestic for copyright infringement in the construction of 35 homes that used the 1500/1560 Plan and the 1801/1860 Plan.

DISCUSSION

A. Statute of Limitations

First, Defendants argue that TGS's copyright cause of action is barred by the statute of limitations. Under 17 U.S.C. § 507(b) "[n]o civil action shall be maintained under the provisions of this title unless it is commenced within three years after the claim accrued." This court's October 23, 2003 Order found that, with respect to the ACI Defendants, that any infringing activities accruing prior to August 13, 1999 were outside the limitation period.

Majestic argues that the same limitation period should apply to it because TGS would have or should have known that ACI sold its house plans to customers, such as Majestic. TGS argues that it was not and reasonably could not have been aware of Majestic's infringing homes before the spring of 2001. Of the 35 allegedly infringing homes, 15 were started by Majestic

after August 1999.

A copyright claim accrues when the plaintiff learns, or in the exercise of due diligence should have learned, that the defendant was infringing its rights. *James W. Ross, Inc. v. Cecil Allen Constr., Inc.*, 2004 U.S. Dist. LEXIS 7521. Courts must look to the facts and circumstances of each case to determine when the statute of limitations begins to toll. *Id.* The *James W. Ross* court rejected the notion that the owner of a copyrighted house plan would need to employ a full time investigator to scour public records and drive around every housing development to ensure that no infringing houses are being built. *Id.*

In this case, TGS's letter to ACI regarding alleged infringement requested ACI to disclose the names of the customers who had purchased ACI Plan 1801. Rather than provide those names in response, ACI responded to TGS by stating that it would remove Plan 1801 from the market. Even though ACI did not reveal the names of its customers, Majestic asserts that with due diligence TGS could have learned of its name and discovered the allegedly infringing conduct. Majestic argues that TGS knew that ACI did not build homes and its failure to require ACI to disclose its customers who had bought plans from ACI was unreasonable as a matter of law. TGS asserts that it had no reasonable means of discovery of the purchasers, including Majestic.

It is undisputed that TGS did not learn of Majestic's infringement until the spring of 2001 when a builder faxed Majestic Plan 1860 to TGS because he believed it was a TGS design. It was not until TGS sent a demand letter to Majestic in the spring of 2001 that TGS learned that Majestic had even purchased plans from ACI. Even if TGS had reviewed ACI's records, ACI's records show only one sale of its Plan 1500 to Majestic in February of 1999. The court cannot

conclude based on the facts before it that Majestic's failure to pursue ACI's customers was unreasonable as a matter of law. There is a question of fact as to whether TGS could have reasonably learned of Majestic's infringement prior to the spring of 2001. Therefore, Majestic's motion for summary judgment on statute of limitation grounds is denied.

B. Other Lots

There are five other homes for which Majestic seeks summary judgment on the grounds that three were not built from TGS plans and two were paid for by Majestic. TGS asserts that the three homes that Majestic claims were not built using TGS plans are in fact infringing. Lot 547 and 558 in the Foothills subdivision in Riverton City have building permits that state that the "same plan 1500" was used. During discovery, Majestic admitted that it "card filed" its 1500/1560 Plan with Riverton City which allowed it to apply for multiple building permits without submitting additional blueprints for each home. TGS asserts that the indication on the building permits for Lot 547 and 558 that the plan being used was the "same plan 1500" demonstrates that the "card filed" plan was being used. With respect to Lot 208 of the Foothills subdivision in Riverton City, TGS asserts that the documents in Majestic's files for this home suggest that the plans were derived from TGS Plan 1885. TGS contends that there is a sketch for the home in the file that is substantially similar to TGS Plan 1885 although the plan was designated by Majestic as Adams Plan 1550.

Majestic argues that the building permits for Lots 208, 547, and 558 in the Foothills Subdivision are unreliable evidence that should not be admitted because the "same plan 1500" notation is an ambiguous reference whereas Majestic's verified discovery answers and the Affidavit of Defendant Larsen state that the homes were not built using the 1500/1560 Plan.

Majestic also argues that, more importantly, the description of the plans in the building permits is unreliable to prove the size or style of homes that were built because the Chief Building Official for Riverton City, Mr. Ball, testified that building permits contain errors and the city was not too concerned with what was written on the permits. Mr. Ball also testified that the size of the home on the permit merely determined the amount of fees to charge and he did not inspect the homes for square footage. Therefore, Majestic argues that the fact that "Same Plan 1500" was written on the permits is not reliable evidence of the plan that Majestic used to build the home.

With respect to these three lots, the court concludes there is enough evidence to survive summary judgment. The credibility of the notations on the building permits are arguments for a jury, not for judgment as a matter of law. Therefore, Majestic's motion for summary judgment with respect to these lots is denied.

As to the two homes for which Majestic paid TGS for its plans, Majestic argues that TGS expressly authorized Majestic to build the homes. The invoices identified the lots and stated that "this purchase constitutes authority to build one building(s) only of each plan listed above." TGS argues that Majestic did not approach it to purchase plans for Lot 540 and Lot 311 until shortly after Lunt informed Majestic that it had learned of Majestic's alleged infringement. Majestic had already applied and obtained building permits for both lots using the infringing 1500/1560 Plan. The building permits for both of these lots indicate that they were applied for at least a month before TGS learned of Majestic's infringement and that the plan was the "same plan 1500" that Majestic had "card filed" with Riverton City.

Although TGS makes much of the fact that Majestic was allegedly infringing on its

copyrights before it agreed to pay for the plans, TGS entered into an agreement with Majestic and granted Majestic authority to build the homes. TGS knew of the alleged infringement before it chose to grant Majestic authority for the two lots in its invoice. The court concludes that TGS should be bound by the representations in its invoice. Based on TGS's invoices specifically granting Majestic authority to build both homes, the court concludes that Majestic is entitled to judgment as a matter of law with respect to Lot 540 and Lot 311.

C. Copying – Access

Next, Defendants argue that TGS cannot demonstrate that Majestic copied TGS' plans because Majestic's only access to TGS' plans was when it bought the 1500/1560 or 1801/1860 Plans from ACI long after they were supposedly copied by ACI. Majestic acknowledges that the case law in this area allows TGS to prove "copying" with circumstantial evidence that Majestic "had access to the copyrighted work and that there are probative similarities between the copyrighted material and the allegedly copied material." *Country Kids 'N City Slicks, Inc. v. Sheen*, 77 F.3d 1280, 1284 (10th Cir. 1996).

Majestic asserts that it does not provide any design services for its customers and has never drawn house plans to build homes. And, there is no evidence that Majestic engaged in contributory infringement by asking ACI to draw the 1500/1560 and 1801/1860 Plans for Majestic. The absence of any evidence of direct copying by Majestic means that TGS must prove that Majestic had access to TGS' 1725 and 1885 Plans and that those plans are substantially similar to the homes built by Majestic with the 1500/1560 and 1801/1860 Plans. Majestic contends that it has uncontested testimony that it did not have access to TGS' plans. Majestic claims that whenever it used Plans 1500/1560 and 1801/1860 to build a home, the plans

were purchased from ACI.

Majestic argues that TGS has the burden to prove that Majestic had access to the 1725 and 1885 Plans before ACI created the 1500/1560 and 1801/1860 Plans. Majestic asserts that it was unaware of ACI and any of the plans in ACI's inventory at the time plaintiff contends that ACI copied the 1725 and 1885 Plans. In a copyright suit "[a] plaintiff must offer significant, affirmative and probative evidence to support a claim of access." *Intersong-USA v. CBS, Inc.*, 757 F. Supp. 274, 281 (S.D.N.Y. 1991). "Conjecture or speculation of access will not suffice." *Id.* Majestic contends that TGS merely speculates that Majestic had access to its widely distributed plans because Majestic was a homebuilder in the same city as TGS.

TGS takes issue with Majestic's argument that there is only hypothetical evidence showing that it had access to the TGS home plans. The court agrees and concludes that there is enough evidence to create an issue of fact. Although Majestic claims that it never possessed a TGS "Residential Designs" planbook, according to TGS invoice records, Majestic Homes bought a TGS "Residential Designs" planbook on March 3, 1996. The invoice was issued in the name of Majestic Homes and signed by Gary Cannon, a realtor who worked with Majestic Homes on occasion. TGS invoice records also show that on April 2, 1996, another Majestic Homes realtor, Gordon Milar, purchased 7 sets and a color rendering of TGS Plan 1885. Both of these purchases were before the alleged "creation date" of the ACI 1801 Plan. Gordon Milar is the real estate agent Majestic Homes listed on its advertising brochures for the 1801/1860 and 1500/1560 Plans. TGS asserts that only three months after these purchases were made, Majestic began construction of an infringing home using the 1801/1860 Plan.

Majestic argues that the Affidavit of Defendant Larsen states that in 1996 Cannon and

Milar were not authorized by Majestic to execute these invoices or to buy materials for Majestic. Mr. Cannon was never employed by Majestic and Mr. Milar was Majestic's real estate agent for homes built at the Foothills subdivision but not until 1998—2 years after the invoices were signed. However, the court concludes that there is evidence supporting both sides and the issue should be resolved at trial.

In addition, the TGS "Residential Designs" planbook is and was widely available throughout the Salt Lake Valley region. In the expert report of Guy Haskell, he specifically noted this fact and acknowledged to TGS when he was approached to be an expert in this matter that he had a current copy of TGS' "Residential Design" planbook. In response to a similar argument advanced by co-defendant ACI, this court denied summary judgment on this issue of access based on Mr. Lunt's declaration that the TGS "Residential Designs" planbook is widely available and commonly possessed by Salt Lake area homebuilders. Although Majestic claims that its only opportunity for access to the TGS plans was through the purchase of ACI's plans, such a conclusion could be undermined by these facts. Therefore, the court concludes that, based on the above evidence, summary judgment is improper and Majestic is not entitled to judgment as a matter of law on this issue.

D. Lanham Act

Defendants argue that the advertising brochures and any other published advertising for the allegedly infringing homes built by Majestic were prepared by Majestic's realtor, not Majestic. The Lanham Act allows an action against "[a]ny person who . . . uses in commerce . . . any false designation of origin . . . which is likely to cause confusion, or to cause mistake, or to deceive as to . . . the origin . . ." of goods or services. 15 U.S.C. § 1125. In *Johnson v. Jones*,

149 F.3d 494 (6th Cir. 1998), where “the plaintiff alleged that defendant, a competing architect copied plaintiff’s drawings, removed plaintiff’s name and seal, and replaced them with his own name and seal,” the court found that “[i]t is difficult to imagine how a designation of origin of a product could be more false, or could be more likely to cause confusion or mistake as to the actual origin of the product” *Id.*

Defendants argue that TGS has not produced expert testimony or other evidence that the purported copying of its plans caused confusion among plan consumers. However, violation of the Lanham Act by ACI will not show that Majestic sold and marketed the TGS plans without leaving TGS’ name and seal on them since Majestic purchased all the allegedly-infringing plans from ACI or plaintiff.

TGS contends that even if Majestic’s realtor prepared all the advertising for the homes, he would have done so with information provided by and approved by Majestic. It is undisputed that the brochures/website/magazine advertisements all contain the designation “Majestic Homes.” TGS alleges that this designation falsely conveys to the consumer the association between Majestic Homes and the plan. Also, there is no mention on any of these advertisements or brochures of any other company. TGS contends that Majestic cannot escape liability on the basis that someone else prepared the false advertising with its name emblazoned on it.

In addition to the print advertising, TGS argues that Majestic also advertised its plans heavily through the use of “model homes.” Majestic built a 1860 Plan home which potential customers could tour and then hire Majestic to build a home from the 1860 Plan or the 1560 Plan—the smaller, reduced-size version of the 1860 Plan. TGS asserts that the impact of these model homes made it clear to customers that they would be purchasing a Majestic Homes plan,

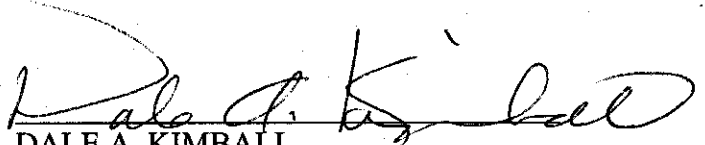
when in fact, they were purchasing a TGS plan. Majestic asserts that it built the homes for a variety of purposes, including marketing, a sales office for its realtor, and to assist buyers who would find it difficult to select options from a drawing. Furthermore, Majestic contends that a construction of a home is not a false identification of the designer—there is no evidence that consumers were confused about the designer of the model home since Majestic did not use the model home to promote the designer.

The court concludes that the Lanham Act claim presents questions of fact that preclude summary judgment. Even if there is no affidavit or deposition testimony that the real estate agent prepared the advertising with information from Majestic, the advertising states Majestic Homes, appears to be created for them, and they should have some responsibility for it given the closeness of the relationship between Majestic and its exclusive real estate agent for the subdivision. The materials speak for themselves—there is no reference to a designer on the advertisement, only Majestic Homes is mentioned. The advertisements appear to convey the message that it is Majestic's plan or at least that they have the authority to use the plan. Therefore, the court finds that there is potential for consumer confusion. A jury should decide whether the exclusion of that information created confusion. Therefore, the court denies Majestic's motion for summary judgment on the Lanham Act claim.

CONCLUSION

For the reasons stated above, Majestic's Motion for Summary Judgment is GRANTED as to the two homes for which Majestic paid TGS for the plans, Lot 540 and Lot 311, and DENIED as to all other claims based on questions of fact.

DATED this 11th day of February, 2005.



DALE A. KIMBALL,
United States District Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00923

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Thomas J. Rossa, Esq.
HOLME ROBERTS & OWEN LLP
299 S MAIN ST STE 1800
SALT LAKE CITY, UT 84111-2263
EMAIL

Catherine L. Brabson, Esq.
HOLME ROBERTS & OWEN LLP
299 S MAIN ST STE 1800
SALT LAKE CITY, UT 84111-2263
EMAIL

Mr. Lynn G. Foster, Esq.
602 E 300 S
SALT LAKE CITY, UT 84102
EMAIL

Mr. J. Angus Edwards, Esq.
JONES WALDO HOLBROOK & MCDONOUGH
170 S MAIN ST STE 1500
PO BOX 45444
SALT LAKE CITY, UT 84145-0444
EMAIL

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

INCONNU LODGE,

Plaintiff,

vs.

**COMMBINE.COM LLC, a texas
Limited Liability Corporation; SHUNIT
SARID, an individual; and SHUNIT
SAHAR, an individual,**

Defendants.

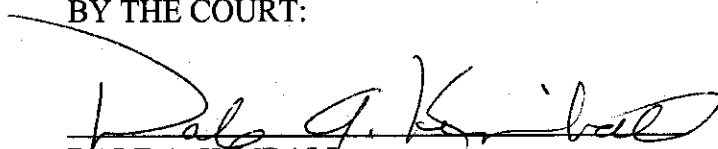
ORDER

Case No. 2:01CV1038 DAK

Pursuant to the Stipulation and Settlement Agreement filed by Plaintiff and Defendants,
this action is HEREBY DISMISSED with prejudice.

DATED this 11th day of February, 2005.

BY THE COURT:


DALE A. KIMBALL
United States District Judge

50

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-01038

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Charles J. Veverka, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Howard M. Neu, Esq.
1152 N UNIVERSITY DR STE 201
PEMBROKE, FL 33024
EMAIL

Mr. F. Kevin Bond, Esq.
BOND & CALL
8 E BROADWAY STE 720
SALT LAKE CITY, UT 84111

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 14 P 2:55

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

ANNETTE BLACK,

Plaintiff,

vs.

JO ANNE B. BARNHART,
Commissioner of Social Security
Administration,

Defendant.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:02CV662 DAK

This matter is before the court on Plaintiff Annette Black's petition to reverse the final agency decision regarding her application for Disability Insurance Benefits and Supplemental Security Income under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-434 (2003); *id* §§ 1381-1383c.

This case was assigned to United States District Court Judge Dale A. Kimball, who then referred it to United States Magistrate Judge Samuel Alba under 28 U.S.C. § 636(b)(1)(B). On January 18, 2005, the Magistrate Judge issued a Report and Recommendation, recommending that the this court deny Plaintiff's request to reverse or remand the Commissioner's decision. The Magistrate Judge found that Plaintiff had failed to show that the ALJ's decision was either legally erroneous or not supported by substantial evidence.

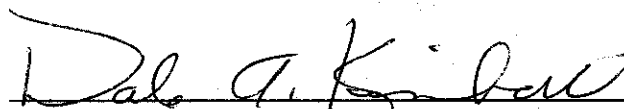
Plaintiff has not filed an objection to the Report and Recommendation, and the time for doing so has passed. The court has reviewed the file *de novo*. The court hereby APPROVES

29

AND ADOPTS the Magistrate Judge's Report and Recommendation in its entirety. Accordingly,
the Commissioner's decision is AFFIRMED.

DATED this 14th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", written over a horizontal line.

DALE A. KIMBALL
United States District Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00662

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
/
EMAIL

Mr. Glen A Cook, Esq.
COOK SKEEN & ROBINSON
5788 S 900 E
SALT LAKE CITY, UT 84121-2178
JFAX 9,8925067

Stephen H.M. Bloch #7813
SOUTHERN UTAH WILDERNESS ALLIANCE
1471 South 1100 East
Salt Lake City, UT 84105
Telephone: (801) 486-3161

Sharon Buccino (DC # 432073) (*pro hac vice*)
Natural Resources Defense Council
1200 New York Ave. NW Suite 400
Washington, D.C. 20005
Telephone: (202) 289-6868

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CLERK, U.S. DISTRICT COURT

2005 FEB 14 P 2:34

DISTRICT OF UTAH

BY: [Signature]
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FEB 17 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

SOUTHERN UTAH WILDERNESS ALLIANCE,
NATURAL RESOURCES DEFENSE COUNCIL, and
THE WILDERNESS SOCIETY

Plaintiffs,

vs.

GALE NORTON, in her official capacity as Secretary
of the Interior, et al.,

Defendants.

Case No. 2:04CV574 (DAK)
Hon. Dale A. Kimball
Hon. David Nuffer

ORDER GRANTING UNOPPOSED MOTION
TO AMEND SCHEDULING ORDER

Based upon the unopposed motion of Southern Utah Wilderness Alliance et al.
("SUWA") and good cause appearing therefore, IT IS HEREBY ORDERED that the
Scheduling Order entered on October 8, 2004, shall be modified as follows:

1. The federal defendants will produce the complete administrative record to
SUWA no later than April 1, 2005.

9

2. SUWA shall file its amended complaint no later than April 30, 2005.

Federal defendants shall file their amended answer within 10 days after service of the amended complaint.

3. SUWA will file its opening brief no later than June 17, 2005.

4. Federal defendants will file their opposition brief no later than July 17, 2005.

5. SUWA will file its reply brief no later than August 12, 2005.

Dated: February 14, 2005

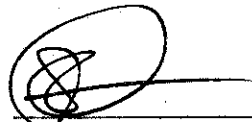
A handwritten signature in black ink, appearing to read 'D. Nuffer', written over a horizontal line.

HON. DAVID NUFFER
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of February, 2005 I served a true and correct copy of **UNOPPOSED MOTION TO AMEND SCHEDULING ORDER AND PROPOSED ORDER** to each of the following persons via United States first-class mail, postage prepaid:

Ruth Ann Storey
U.S. Department of Justice
Environmental & Natural Resources, GLS
P.O. Box 663
Washington, DC 20044-0663

A handwritten signature in black ink, consisting of a stylized 'S' and 'B' followed by a horizontal line.

Stephen Bloch

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00574

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Stephen H. Bloch, Esq.
SOUTHERN UTAH WILDERNESS ALLIANCE
1471 S 1100 E
SALT LAKE CITY, UT 84105
EMAIL

Sharon Buccino, Esq.
NATURAL RESOURCES DEFENSE COUNCIL
1200 NEW YORK AVE NW STE 400
WASHINGTON, DC 20005
EMAIL

Ruth A. Storey, Esq.
US DEPARTMENT OF JUSTICE
ENVIRONMENTAL & NATURAL RESOURCES DIV
PO BOX 663
WASHINGTON, DC 20044-0663

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
2005 FEB 14 P 2:55
DISTRICT OF UTAH

EARL L. PAGEL,

Petitioner,

v.

UTAH STATE PRISON et al.,

Respondents.

Case No. 2:05-CV-481TC

O R D E R

BY: DAK
DEPUTY CLERK

Petitioner, Earl L. Pagel, an inmate at Duchesne County Jail, filed a habeas corpus petition. 28 U.S.C.A. § 2241 (West Supp. 2004). Although Petitioner couches his claim in a variety of ways, the kernel of his argument is that he has been unconstitutionally denied parole regarding his five-to-life sentence.

As the Court told Petitioner in a past order:

There is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7, 99 S. Ct. 2100, 2104 (1979). Nor does the Utah parole statute create a liberty interest entitling prisoners to federal constitutional protection. See *Malek v. Haun*, 26 F.3d 1013, 1016 (10th Cir. 1994).

Pagel v. Utah State Prison, 2:02-CV-481TC, slip op. at 5 (D. Utah Mar. 4, 2003).

Some of Petitioner's arguments may also possibly be construed to raise conditions-of-confinement issues, which would be inappropriate in this habeas petition and therefore are not


4

addressed here. If Petitioner wishes to raise such issues, he may do so in a civil rights complaint. See 42 U.S.C.A. § 1983 (West 2003).

IT IS HEREBY ORDERED that Petitioner's habeas corpus petition is denied.

DATED this 14th day of February, 2005.

BY THE COURT:


DALE A. KIMBALL
United States District Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00050

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Earl L. Pagel
DUCHESNE COUNTY JAIL
#41105
PO BOX 10
DUCHESNE, UT 84021

Criminal Appeals, Esq.
CRIMINAL APPEALS
160 E 300 S SIXTH FLOOR
PO BOX 140854
SALT LAKE CITY, UT 84114-0854
JFAX 9,3660167

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 14 P 3:40

DISTRICT OF UTAH
BY: [Signature]
DEPUTY CLERK

PETER C. COLLINS (#0700)
PETER C. COLLINS, L.L.C.
623 East 2100 South
Salt Lake City, UT 84106
Telephone: (801) 467-1700
Facsimile: (801) 467-1800
pete@bcmlaw.net

Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

KAREN HAGEN,

Plaintiff,

vs.

RAYMOND M. SCHMIDT, d.b.a.
SCHMIDT TRUCKING, and PATRICK
McCONE,

Defendants.

JUDGMENT

Case No. 2:03-cv-00411DAK

Judge Dale A. Kimball

This case was tried before the Honorable Dale A. Kimball and a twelve-person jury on January 10, 11, 12, and 13, 2005. Peter C. Collins represented the plaintiff. Clifford C. Ross, of the firm of Dunn & Dunn, represented the defendants.

On January 13, 2005, the jury returned the following unanimous verdict:

Entered on docket
2-14-05 by:

[Signature]
Deputy Clerk

119

Based on the Jury Instructions and the evidence presented in this case, please set forth the amount of damages Plaintiff Karen Hagen has proven by a preponderance of the evidence are a result of the collision of December 12, 2002.

1.	Past Special Damages:	
A.	Health Care/Medical Damages	\$ 151,641.51
B.	Lost Earnings	\$ 28,544.00
C.	Household and Personal Services	\$ 6,600.00
2.	Future Special Damages:	
A.	Health Care/Medical Damages	\$ 100,000.00
B.	Income & Earning Capacity	\$ 400,000.00
C.	Employment-Related Benefits	\$ 60,000.00
D.	Household and Personal Services	\$ 62,000.00
3.	General Damages:	\$1,250,000.00
TOTAL:		\$2,058,785.51

DATED this 13th day of January, 2005.

/s/ GEOFFREY L. COLTON
FOREPERSON

Prior to trial, there was paid, on behalf of defendants, to RTW, plaintiff Karen Hagen's workers compensation carrier, the sum of \$163,586.15. Ms. Hagen concedes that that amount should be reduced before this Judgment is entered.

Based on the said Verdict, on Ms. Hagen's entitlement to pre-judgment interest accruing on the said amounts of past special damages at the Utah statutory rate of 10% per annum from the date (December 12, 2002) of the subject incident, on the fact of the said payment, and on the Court's Order dated February 7, 2005, and good cause appearing, Judgment is hereby

entered, in favor of plaintiff, Karen Hagen, and against defendants, Raymond M. Schmidt, d.b.a. Schmidt Trucking, and Patrick McCone, in the amount of \$1,935,611.95.

To the said amount (\$1,935,611.95) of this Judgment shall be added Ms. Hagen's compensable costs of court, to be determined post-Judgment. This Judgment (augmented by such costs) shall bear interest, at the judgment rate of 2.96% per annum, from February 11, 2005 forward.

ENTERED this 14th day of February, 2005.

MARKUS B. ZIMMER
CLERK, U.S. DISTRICT COURT

BY: 
DEPUTY CLERK

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00411

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Peter C. Collins, Esq.
PETER C COLLINS LLC
623 E 2100 S
SALT LAKE CITY, UT 84106
JFAX 9,4671800

Mr. Clifford C Ross, Esq.
DUNN & DUNN
505 E 200 S 2ND FL
SALT LAKE CITY, UT 84102
JFAX 9,5219998

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

HOWARD EUGENE BALL

Case Number:

2:05-CR-82

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

FEB 11 2005

BY MARCUS B. ZIMMER, CLERK
DEPUTY CLERK

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal, state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____

- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses

- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention


I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

HISTORY OF FAILING TO APPEAR

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 11, 2005



Signature of Judicial Officer

CHIEF MAGISTRATE JUDGE SAMUEL ALBA

Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 14, 2005

SS

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cr-00082

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Karin Fojtik, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mr. L. Clark Donaldson, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

United States District Court

CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

GILBERT TODD ELLIS

Case Number:

2:04-CR-616 PGC

FEB 11 2005

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in _____

- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses

- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in _____
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

PRIOR CRIMINAL HISTORY

PRIOR FAILURES TO APPEAR

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 11, 2005



Signature of Judicial Officer

CHIEF MAGISTRATE JUDGE SAMUEL ALBA

Name and Title of Judicial Officer

*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00616

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

David F. Backman, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Vanessa M. Ramos-Smith, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 11 P 4:08
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

NORTHFACE UNIVERSITY, LLC,

Plaintiff,

vs.

THE NORTH FACE APPAREL CORP.,

Defendant.

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

Case No. 2:05-CV-00011-PGC

Defendant, The North Face Apparel Corp., moves to dismiss the declaratory judgment action brought by Plaintiff, Northface University, LLC, because it is duplicative of an earlier filed action filed by the defendant in the Northern District of California. The defendant's motion is GRANTED because the Northern District of California was the first federal district court where the action was filed.

BACKGROUND

Defendant has registered its the NORTH FACE trademarks in the United States Patent and Trademark Office (USPTO) and owns several federal registrations thereof. Plaintiff is an educational institution, and its affiliate, Northface Holdings, LLC, owns two pending trademark applications with the USPTO to federally register NORTHFACE UNIVERSITY and claim

nationwide trademark rights.

On November 29, 2004, Defendant filed a complaint in California (the California Action) and provided a courtesy copy to Plaintiff. About a month later, on January 4, 2005, Plaintiff filed this declaratory judgment action and served process on Defendant the same day. The next day, January 5, 2005, Defendant served process on Plaintiff for the action in the Northern District of California. Then, on January 14, 2005, Defendants filed this Motion to Dismiss. On January 31, 2005, Plaintiff filed its opposition to Defendant's Motion to Dismiss the declaratory judgment and its Motion to Dismiss for lack of personal jurisdiction in the California Action.

DISCUSSION

Defendant argues that the suit in this court should be dismissed because the California Action was filed first in time. As a general rule, when two courts have concurrent jurisdiction over the parties and issues to a dispute, the first court in which jurisdiction attaches has priority to consider the case.¹ There must be "substantial overlap" in the two actions for the first-to-file rule to apply.² The rule is intended to "avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result."³

The parties do not dispute that there is substantial overlap in the two actions. Plaintiffs, however, contend that the first-to-file rule does not apply here because the Northern District of

¹See *Black Diamond Equip. Ltd. v. Genuine Guide Gear*, 71 U.S.P.Q.2d 1532, 1533 (D. Utah 2004).

²*Id.*

³*Id.* (citing *Save Power Ltd. v. Syntek Finance Corp.*, 121 F.3d 947, 950 (5th Cir. 1997)).

California did not obtain jurisdiction over the parties and issues. Plaintiff has filed a Motion to Dismiss for lack of personal jurisdiction in response to the Defendant's complaint in the California Action. Plaintiff asserts that the Northern District of California has no jurisdiction over the Plaintiff. This motion is pending.

The court disagrees with Plaintiff. The Motion to Dismiss for lack of personal jurisdiction in the California Action does not negate the jurisdiction that attached in California when the California Action was filed. The 10th Circuit stated, "In the absence of bad faith or collusion . . . jurisdiction attaches at the moment of the filing of the complaint and the existence of a good defense . . . will not defeat jurisdiction previously acquired."⁴ Additionally, jurisdiction attaches when a complaint is filed, regardless of a pending Rule 12(b) motion to dismiss.⁵

Plaintiff contends that whether to apply the first-to-file rule is within the court's discretion. Plaintiff cites precedent explaining that the first-to-file rule "is not a rigid or inflexible rule to be mechanically applied, but rather is to be applied with a view to the dictates of sound judicial administration."⁶ There are, however, no special circumstances here that compel the court to use its discretion and abandon the first-to-file rule. The California Action was filed more than one month before the declaratory judgment action. Plaintiff was made aware of the complaint before filing this declaratory judgment action. It would be duplicative of the

⁴*Anderson-Thompson, Inc. v. Logan Grain Co.*, 238 F.2d 598, 601 (10th Cir. 1956).

⁵*Hospah Coal Co. v. Chaco Energy Co.*, 673 F.2d 1161, 1164 (10th Cir. 1982).

⁶*Comprehensive Health Sys., Inc. v. Chamberlain*, 648 F. Supp. 247, 250 (D. Utah 1986).

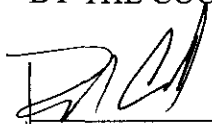
proceedings in the California Action and a waste of judicial resources for this court to continue to review the same issue. Accordingly, the first-to-file rule applies.

CONCLUSION

The Northern District of California has priority because it is the first federal district court where the action was filed. For this reason, the Defendant's motion to dismiss is GRANTED (#3-1). This case is dismissed without prejudice.

DATED this 11th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00011

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Larry R Laycock, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

James B. Belshe, Esq.
WORKMAN NYDEGGER
1000 EAGLE GATE TOWER
60 E S TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Erik A. Christiansen, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Susan M. Kayser, Esq.
HOWREY SIMON ARNOLD & WHITE
1299 PENNSYLVANIA AVE NW
WASHINGTON, DC 20004-2402

Katherine M. Basile, Esq.
HOWREY SIMON ARNOLD & WHITE
301 RAVENSWOOD AVE
MENLO PARK, CA 94025

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	Case No. 2:04-CR-785 PGC
Plaintiff,)	
)	
vs.)	
)	ORDER OF RELEASE
NATHAN R. TYLER,)	
)	
Defendant.)	

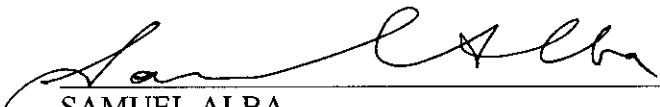
TO THE UNITED STATES MARHSAL:

Based upon the motion of the Defendant Nathan R. Tyler, the stipulation of the United States Attorney, and good cause appearing,

IT IS HEREBY ORDERED that the Defendant Nathan R. Tyler be released from USMS custody for supervision by the Utah State Parole Office. Defendant is ordered to appear for a change of plea in the above Court on February 22, 2005, at 11:00 a.m.

DATED this 11th day of February, 2005.

BY THE COURT:



SAMUEL ALBA
United States Magistrate Judge

52

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00785

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lynda Rolston Krause, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

Mr. Randy S Ludlow, Esq.
185 S STATE STE 208
SALT LAKE CITY, UT 84111
EMAIL

Mr. Manny C Garcia, Esq.
150 S 600 E STE 5-C
SALT LAKE CITY, UT 84102
EMAIL

Mr. James D. Garrett, Esq.
2091 E 1300 S STE 201
SALT LAKE CITY, UT 84108
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

2005 FEB 11 P 4: 58

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

CECILIO SANABIA SALCEDO

Plaintiff,

vs.

UNITED STATES OF AMERICA

Defendant.

ORDER DIRECTING
GOVERNMENT TO RESPOND

Case No. 2:04-CV-01189PGC

The petitioner has filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. The defendant was sentenced after the Supreme Court decided *Blakely v. Washington*,¹ but before *Blakely* was applied to the Federal Guidelines in *United States v. Booker*.² While this court had previously ruled that *Blakely* applied to the Guidelines,³ because there were no enhancements at issue in the petitioner's case, the court applied the Guidelines. Under the holding of the remedial majority in *Booker*, however, the Guidelines are now only "advisory" regardless of whether there are enhancements involved in sentencing. This presents two issues the court would like the

¹124 S.Ct. 2531 (2004).

²125 S.Ct. 738 (2005).

³*United States v. Croxford*, 324 F.Supp.2d 1230 (D. Utah, July 8, 2004).

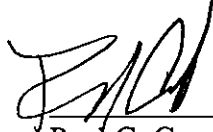
3

government to address. First, was *Booker* “dictated” by *Blakely*, or did *Booker* announce a new rule;⁴ and (2) Even if *Booker* was dictated by *Blakely*, was it harmless error for the court to sentence the petitioner under the Guidelines. These issues both address the merits of the petitioner’s case. Therefore, the court would also like the government to address two procedural issues: (1) Did the petitioner waive the right to collateral review of his sentence?; and (2) Is the petitioner procedurally barred from raising this issue now based upon his failure to raise it on direct appeal?⁵

The government is directed to file a response to petitioner’s motion within 30 days of this order.

DATED this 11th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

⁴See *Rucker v. United States*, Civ. No. 2:04-00914PGC (D. Utah, Feb. 10, 2004) at * 7.

⁵*Id.* at * 4.

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01189

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Cecilio Sanabia-Salcedo
CALIFORNIA CITY CORRECTIONAL CENTER
11730-081
PO BOX 3001-0001
CALIFORNIA CITY, CA 93504

Dustin B. Pead, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

SHARON PRESTON (7960)
Attorney for Defendant
716 East 4500 South, Suite N142
Salt Lake City, UT 84107
Telephone (801) 269-9541

FILED
CLERK, U.S. DISTRICT COURT
2005 FEB 11 P 4: 58
RECEIVED CLERK
DISTRICT COURT UTAH
FEB 10 2005
BY: _____
DEPUTY CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

VICTOR CISNEROS,

Defendant.

)
)
) ORDER
)
)
)
) Case No. 1:04-CR-37
) Judge Paul Cassell
)
)

Based on Defendant's motion and consent of the government, and good cause appearing therefore, the sentencing in this matter is continued will commence on the ____

1st day of March, 2005, at 1:30 a.m./p.m.

IT IS ORDERED this 11th day of February, 2005.

BY THE COURT



JUDGE PAUL CASSELL

51

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cr-00037

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Vernon G. Stejskal, Esq.
DRUG ENFORCEMENT ADMINISTRATION
METROPOLITAN NARCOTICS TASK FORCE
348 E SOUTH TEMPLE
SALT LAKE CITY, UT 84111
EMAIL

Sharon L. Preston, Esq.
716 E 4500 S STE N142
SALT LAKE CITY, UT 84107
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED RECEIVED CLERK
CLERK, U.S. DISTRICT COURT

FEB 10 2005

2005 FEB 11 P 4:08

PAUL M. WARNER, United States Attorney, U.S. DISTRICT COURT
JENNIFER J. SHASKY, Trial Attorney, U.S. Department of Justice
Organized Crime & Racketeering Section
CYNTHIA STONE, Trial Attorney, U.S. Department of Justice
Organized Crime & Racketeering Section
Attorneys for the United States of America
1301 New York Avenue, N.W., Suite 700
Washington, DC 20005
Telephone: (202) 305-3891
Facsimile: (202) 616-0878

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Garri GRIGORIAN
a/k/a Garri Grigorian,
a/k/a Garri Grigoryan,

Defendant.

:
:
: 2:04CR00151 PGC
:
:
:

RECEIVED

FEB 10 2005

OFFICE OF
JUDGE PAUL G. CASSELL

SECOND SCHEDULING ORDER

Upon the joint motion of the Government, by and through its counsel, and the Defendant, GARRI GRIGORIAN, by and through his counsel, along with dates and rulings issued by the Court at the January 7, 2005 motions hearing it is hereby,

132

I. Internal Spreadsheets

ORDERED that by **February 1, 2005**, the United States provide draft copies of its internal spreadsheet which depicts the wire transfer activity of the Utah bank accounts described in the pending Indictment.

II. Plea Agreement Deadline

It is further ORDERED that the Government and the Defendant shall complete all plea discussions and submit any resulting plea agreement to the Court by close of business on **February 22, 2005**, and further that the Defendant and the Government shall comply with such deadline, except upon motion of either party and for good cause shown.

III. Supplements to Rule 16 Notice

It is further ORDERED that on or about **January 18, 2005**, the United States provide the name and firm name of the expert witness identified in the United States Rule 16 Notice as Expert on Russian and Transnational Banking Matters. This information will be provided to counsel for Defendant under a protective order as detailed in a sealed chambers conference.

It is further ORDERED that on or about **February 18, 2005**, the United States provide supplemental Rule 16 summaries as to the anticipated testimony of William Gilligan and the Expert on Russian and Transnational Banking Matters. This supplemental

disclosure shall include copies of any Russian laws that the experts relied on in forming their opinions.

IV. Draft of Summary Exhibits

It is further ORDERED that by **March 1, 2005**, the United States provide drafts of summary exhibits which the United States intends to offer as part of its case-in-chief. Final summary exhibits will be provided prior to trial.

V. Notice of Defense Expert Witness

Since the Government made a disclosure to Defendant pursuant to Fed. R. Crim. P. 16(a)(1)(G), it is further ORDERED that pursuant to Fed. R. Crim. P. 16(b)(1)(C), by close of business on **March 1, 2005**, the Defendant, by and through his counsel, shall give to the Government a written summary of any testimony that the Defendant intends to use under Rules 702, 703, or 705, of the Federal Rules of Evidence as evidence at trial. The summary provided must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

VI. Daubert Hearing

It is further ORDERED that affirmative submissions by each party on why the proffered expert witness satisfies the requirements set forth in *Daubert* be filed on **March 8, 2005**. Responses are

due on **March 21, 2005**. A *Daubert* hearing is scheduled for **March 30, 2005 at 9:00 a.m.**

VII. James Requirements

It is further ORDERED that the United States file a written submission summarizing that *James* requirements have been met for the conspiracy alleged in the Indictment on **March 8, 2005** and that Defendant respond by **March 21, 2005**.

VIII. Defense Deposition of Eric Grigorian

It is further ORDERED that the deposition of Eric Grigorian in Moscow, requested by Defendant, take place during the period of **March 14 to March 18, 2005** and that defense counsel make every attempt to proceed by way of Letters Rogatory to the appropriate Russian officials for the taking of this deposition. It is further ORDERED that a joint proposed order, detailing the procedure to be followed in the deposition, be submitted to this Court prior to the taking of the deposition.

IX. Discovery and Inspection

It is further ORDERED pursuant to Fed. R. Crim. P. 16(b), that by close of business on **March 4, 2005**:

1. The Defendant shall permit the Government to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the Defendant and

which the Defendant intends to introduce as evidence in chief at the trial.

2. The Defendant shall permit the Government to inspect and copy or photograph any results or reports of physical or mental examination and of scientific test or experiments made in connection with the particular case, or copies thereof, within the possession or control of the Defendant, which the Defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the Defendant intends to call at the trial when the results or reports relate to his testimony.

It is further ORDERED that if, prior to or during trial, a party discovers additional evidence or material which is subject to discovery or inspection under the ORDER, such party shall promptly notify the other party or the Court of the existence of the additional evidence or material.

X. Motions in Limine

It is further ORDERED that the Government and the Defendant, by and through his counsel, shall file their respective motions in limine in a single consolidated pleading, not to exceed 30 pages, by close of business on **March 8, 2005**, and that respective responses shall be filed by close of business on **March 21, 2005**, and further that the Defendant and

the Government shall comply with such deadline, except upon motion of either party and for good cause shown.

XI. Exhibit List

It is further ORDERED that the Government and the Defendant, by and through his counsel, shall file their respective exhibit lists by close of business on **March 21, 2005**, and further that the Defendant and the Government shall comply with such deadline, except upon motion of either party and for good cause shown. Counsel show try and stipulate to as many exhibits as possible prior to submission.

XII. FINAL PRE-TRIAL CONFERENCE

It is further ORDERED that a final pre-trial conference at shall be held on **March 23, 2005, at 1:00 pm**.

XIII. Jencks/Giglio Materials

It is further ORDERED that by close of business on **March 28, 2005**, the Government shall produce to the Defendant the Jencks Act and Giglio materials for the witnesses who will testify in the Government's case in chief.

Counsel for the Defendant may disclose the contents of said Jencks Act and Giglio materials to his client but may not provide his client with said documents or reproductions thereof.

All Jencks Act, Giglio materials and reproductions thereof shall be returned to the United States Department of Justice

forthwith at the conclusion of the trial in the above-styled case.

It is further ORDERED pursuant to Fed. R. Crim. P. 26.2, that by close of business on **March 28, 2005**, the Defendant, by and through his counsel, shall produce to the Government the statements of any witness, other than the Defendant, who will testify on behalf of the Defendant.

XIV. Witness List

It is further ORDERED that the Government and the Defendant, by and through his counsel, shall file their respective witness lists by close of business on **March 28, 2005**, and further that the Defendant and the Government shall comply with such deadline, except upon motion of either party and for good cause shown.

XV. Jury Instructions and Voire Dire

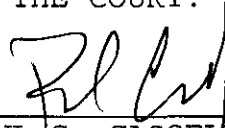
It is further ORDERED that the Government and the Defendant, by and through his counsel, shall file proposed jury instructions and voir dire by close of business on **March 29, 2005**, and further that the Defendant and the Government shall comply with such deadline, except upon motion of either party and for good cause shown. A jury instruction conference is scheduled for **April 8, 2005 at 2:30 p.m.**

XVI. Trial Date

It is further ORDERED that the trial of Defendant will begin on **April 4, 2005**, at 8:30 am, except that, upon motion of either party and for good cause shown, the court may continue such trial to a later date. Any request for a continuance should be filed as soon as possible.

DATED this 11th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul G. Casell", is written over a horizontal line.

PAUL G. CASSELL, JUDGE
UNITED STATES DISTRICT COURT

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00151

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jennifer Shasky, Esq.
US DEPT OF JUSTICE
CRIMINAL DIVISION
1301 NEW YORK AVE #700
WASHINGTON, DC 20530
EMAIL

Cynthia Stone, Esq.
US DEPT OF JUSTICE
ASSET FORFEITURE & MONEY LAUNDERING SECT
1400 NEW YORK AVE NW
WASHINGTON, DC 20001
EMAIL

Mark S. Kouris, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

US Probation
DISTRICT OF UTAH
,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 11 P 4: 08

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY: _____
DEPUTY CLERK

MICHAEL HOLDEN, dba HOLDEN
TRUCKING

Plaintiff(s),

vs.

BLACK ROCK RANCH, L.L.C. and
CASTLEBROOK BARNS, an unknown
business entity

Defendant(s).


ORDER SETTING DEADLINE FOR
ARBITRATION

Case No. 2:04-cv-00324 PGC

This matter has previously been referred for arbitration, but the arbitration has not yet begun. The court directs that the parties shall conclude their arbitration on this matter by March 11, 2005. Counsel are to submit a joint status report of the outcome by April 11, 2005

DATED this 11th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

9

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00324

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Geoffrey C Haslam, Esq.
CHRISTENSEN & JENSEN PC
50 S MAIN STE 1500
SALT LAKE CITY, UT 84144
EMAIL

Mr. Michael P Zaccheo, Esq.
RICHARDS BRANDT MILLER & NELSON
50 S MAIN ST STE 700
PO BOX 2465
SALT LAKE CITY, UT 84110
EMAIL

Mark R. Clements, Esq.
HATCH JAMES & DODGE
10 W BROADWAY STE 400
SALT LAKE CITY, UT 84101
EMAIL

STEVEN B. KILLPACK, Federal Defender (#180)
WENDY M. LEWIS, Assistant Federal Defender (#5993)
Utah Federal Defender Office
46 West 300 South, Suite 110
Salt Lake City, Utah 84101
Telephone: (801) 524-4010

RECEIVED

FEB 20 2005 11 P 4: 08

OFFICE OF THE CLERK OF THE DISTRICT COURT
JUDGE PAUL G. CASSELL
BY: DEPUTY CLERK RECEIVED CLERK
FEB - 8 2005

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

WAYNE TUBBS,

Defendant.

ORDER TO CONTINUE
JURY TRIAL

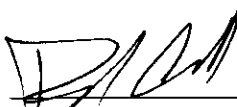
Case No. 2:04CR-401PGC

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial previously scheduled for February 22, 2005, is hereby ~~stricken~~. *Change of Plea/Status set for*
~~continued to the 1st~~ day of *March*, 2005, at *2:00 p.m.* Pursuant to 18 U.S.C. § 3161(h), the court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant to a speedy trial. The time of the delay shall constitute excludable time under the Speedy Trial Act.

Dated this 11th day of February, 2005.

BY THE COURT:



HONORABLE PAUL G. CASSELL
United States District Court Judge



United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cr-00401

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Paul G. Amann, Esq.
UTAH ATTORNEY GENERAL'S OFFICE
CHILDREN'S JUSTICE DIVISION
5272 COLLEGE DR STE 200
SALT LAKE CITY, UT 84123
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH
/
EMAIL

US Probation
DISTRICT OF UTAH
/
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

United States District Court
District of Utah

2005 FEB 11 P 4: 08
DISTRICT OF UTAH

UNITED STATES OF AMERICA

vs.

John Perry Baze

(For Revocation of Probation or Supervised Release)
(For Offenses Committed On or After November 1, 1987)

Case Number: **2:02-cr-00166-001 PGC**

Plaintiff Attorney: **Kirk Lusty**

Defendant Attorney: **Wendy Lewis**

Atty: CJA ___ Ret ___ FPD **X**

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **09490-081**

Defendant's Residence Address: _____

unknown

Country **USA**

02/07/2005

Date of Imposition of Sentence

Defendant's Mailing Address: _____

same

Country **same**

THE DEFENDANT:

COP **02/07/2005** Verdict _____

- ☒ admitted to allegation(s) **1 - 5 of the Petition**
- ☐ pleaded nolo contendere to allegation(s) _____
which was accepted by the court.
- ☐ was found guilty as to allegation(s) _____

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Date Violation Occured</u>
Allegation #1	Defendant submitted a urine specimen which tested positive for methamphetamine	05/28/2004
Allegation #2	Defendant submitted a urine specimen which tested positive for methamphetamine	05/31/2004
Allegation #3	Defendant violated a condition of the Cornell Corrections Center by being in possession of a cellular telephone.	06/06/2004
Allegation #4	Defendant violated a condition of the Cornell Corrections Center by being unaccountable in the community.	06/09/2004
Allegation #5	Defendant absconded from the Cornell Corrections Center, and his whereabouts were unknown	06/17/2004

- ☐ The defendant has been found not guilty on count(s) _____
- ☐ Count(s) _____ (is)(are) dismissed on the motion of the United States.

Entered on docket

2-14-05 by:

[Signature]
Deputy Clerk

42

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **10 months**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **No further supervision**.

- ☐ The defendant is placed on Probation for a period of _____.
The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
No Fine Imposed
-

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
-

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>		<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Wells Fargo Bank Attn: Harry Hardwick 5201 W. Amelia Earhart Dr. Salt Lake City, UT 84116	REINSTATED	3,394.03	3,394.03
Totals:		\$ <u>3,394.03</u>	\$ <u>3,394.03</u>

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☒ Restitution is payable as follows:

☒ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

**Interest Free. Jointly and severally with Brad Lee Gordon (2:01-cr-00742-001);
Candice Renea Eppard (002); Darrell Wayne Reese (003); Dale Walter Osborne(004)
and Sean David Alexander (005)**

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☒ **REINSTATED**

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

RECOMMENDATION

- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

A drug treatment program

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 2/11/05



Paul Cassell
United States District Judge

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

**U.S. Courts
Case Inquiry Report**

Case Number DUTX202CR000166 Case Title JOHN P. BAZE

Summary Party Information:

Party#	Party Name	Debt Type
001	JOHN P. BAZE	SPECIAL PENALTY ASSESSMENT
001	JOHN P. BAZE	VICTIM RESTITUTION

Total Owed	Total Collected	Total Outstanding
100.00	100.00	0.00
3,394.03	222.00	3,172.03
3,494.03	322.00	3,172.03

Summary Payee Information:

Payee Code	Payee Name
CONV004292	WELLS FARGO BANK

Total Owed	Total Paid	Total Outstanding
3,394.03	0.00	3,394.03
3,394.03	0.00	3,394.03

Registry Information:

Depository Code	Depository Name	Account Type
-----------------	-----------------	--------------

Account Code	Depository Total
--------------	------------------

U.S. Courts
Case Inquiry Report

Detailed Party Information:

Party Number	Party Name
001	JOHN P. BAZE

Debt Type
SPECIAL PENALTY ASSESSMENT

	Principal	Interest	Penalty	Total
Fund	504100			N/A
Owed	100.00	0.00	0.00	100.00
Collected	100.00	0.00	0.00	100.00
Outstanding	0.00	0.00	0.00	0.00
Paid	0.00	0.00	N/A	0.00
Refunded	0.00	0.00	N/A	0.00
Available	100.00	0.00	N/A	100.00

VICTIM RESTITUTION

	Principal	Interest	Penalty	Total
Fund	6855XX			N/A
Owed	3,394.03	0.00	0.00	3,394.03
Collected	222.00	0.00	0.00	222.00
Outstanding	3,172.03	0.00	0.00	3,172.03
Paid	0.00	0.00	N/A	0.00
Refunded	0.00	0.00	N/A	0.00
Available	0.00	0.00	N/A	0.00

Totals

	Principal	Interest	Penalty	Total
Owed	3,494.03	0.00	0.00	3,494.03
Collected	322.00	0.00	0.00	322.00
Outstanding	3,172.03	0.00	0.00	3,172.03
Paid	0.00	0.00	N/A	0.00
Refunded	0.00	0.00	N/A	0.00
Available	100.00	0.00	N/A	100.00

U.S. Courts
Case Inquiry Report

Detailed Payee Information:

Payee Code Payee Name
CONV004292 WELLS FARGO BANK

	Principal	Interest	Total
Owed	3,394.03	N/A	3,394.03
Apportioned	222.00	0.00	222.00
Paid	0.00	0.00	0.00
Refunded	0.00	0.00	0.00
Outstanding	3,394.03	N/A	3,394.03

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cr-00166

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Mr. Kirk C. Lusty, Esq.
US POSTAL SERVICE
LAW DEPT WE AREA
9350 S 150 E #800
SANDY, UT 84070-2702
EMAIL

Wendy M. Lewis, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

United States District Court P 4: 08
District of Utah

UNITED STATES OF AMERICA

vs.

James Joseph Wilson

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:03-cr-00882-001 PGC**

Plaintiff Attorney: **Barbara Bearnson**

Defendant Attorney: **Mark Kouris**

Atty: CJA ___ Ret ___ FPD **X**

Defendant's Soc. Sec. No.: _____

Defendant's Date of Birth: _____

Defendant's USM No.: **11047-081**

Defendant's Residence Address:

Utah State Prison

Country USA

01/13/2005

Date of Imposition of Sentence

Defendant's Mailing Address:

same

Country USA

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)
which was accepted by the court.

☐ was found guilty on count(s)

COP 09/01/2004 Verdict _____

1ss of the Second Superseding Indictment

Title & Section

18 USC § 2113(a)(d)

Nature of Offense

Armed Credit Union Robbery

Count

Number(s)

1ss

Entered on docket

2-11-05 by:

Rgt

Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☒ Count(s) **2ss of the Second Superseding** (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **188 months to run concurrently with his state sentence in case number 971900287 FS and the return of any personal property being held.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **36 months**.

☐ The defendant is placed on Probation for a period of _____.

129

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the USPO..
2. The defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office.
3. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of conditions of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches, pursuant to this condition.
4. The defendant shall maintain full-time, verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office.
5. The defendant shall submit to the collection of a DNA sample at the direction of the BOP or the USPO.

CRIMINAL MONETARY PENALTIES

FINE

The defendant shall pay a fine in the amount of \$ _____, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Intermountain Credit Union 1799 South Pioneer Road Salt Lake City, UT 84104	9,795.15	9,795.15

Totals: \$ 9,795.15 \$ 9,795.15

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☒ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:
Due immediately and payable at \$25 a quarter while incarcerated and a minimum rate of \$100 per month upon release from incarceration

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until _____ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00 , payable as follows:

☒ forthwith.

☐ _____

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

RECOMMENDATION

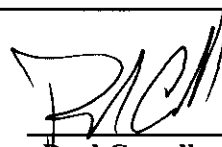
- ☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Placement in Leavenworth, KS to facilitate family visitation, or failing that, in Missouri

CUSTODY/SURRENDER

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at _____ on _____.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by _____ Institution's local time, on _____.

DATE: 2/1/05



Paul Cassell

United States District Judge

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00882

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Ms. Barbara Bearnson, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

Mark S. Kouris, Esq.
UTAH FEDERAL DEFENDER OFFICE
46 W BROADWAY STE 110
SALT LAKE CITY, UT 84101
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

FILED
CLERK, U.S. DISTRICT COURT

2005 FEB 11 P 4:08

DISTRICT OF UTAH
IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

HELIUS, INC.,

Plaintiff and Counterclaim Defendant,

vs.

SKYSTREAM NETWORKS, INC.; THE
DIRECT TV GROUP, INC. (formerly known
as HUGHES ELECTRONICS
CORPORATION); and HUGHES
NETWORK SYSTEMS, INC.,

Defendants and Counterclaimants.

ORDER OVERRULING
SKYSTREAM NETWORKS, INC.'S
OBJECTIONS TO MAGISTRATE
JUDGE ALBA'S NOVEMBER 30,
2004 ORDER GRANTING HELIUS,
INC.'S MOTION FOR A
PROTECTIVE ORDER

Case No. 2:01-CV-00516 PGC

The court has reviewed all of the pleadings and exhibits in this matter, including the transcript of the October 28, 2004 hearing, and finds that no portion of Magistrate Judge Alba's ruling was "clearly erroneous or contrary to law."¹ Skystream's objections to the November 30,

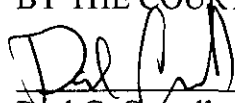
¹FED. R. CIV. P. 72.

232

2004 order granting Helius, Inc.'s motion for a protective order are therefore overruled (#220-1).

DATED this 11th day of ^{February}~~January~~, 2005.

BY THE COURT:



Paul G. Cassell

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:01-cv-00516

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Robert S. Clark, Esq.
PARR WADDOUPS BROWN GEE & LOVELESS
185 S STATE ST STE 1300
PO BOX 11019
SALT LAKE CITY, UT 84147
EMAIL

Timothy B. Smith, Esq.
PARR WADDOUPS BROWN GEE & LOVELESS
185 S STATE ST STE 1300
PO BOX 11019
SALT LAKE CITY, UT 84147
EMAIL

Mark E. Ungerman, Esq.
FULBRIGHT & JAWORSKI
801 PENNSYLVANIA AVE NW
WASHINGTON, DC 20004-2615
EMAIL

Ms. Barbara K Polich, Esq.
PARSONS BEHLE & LATIMER
201 S MAIN ST STE 1800
PO BOX 45898
SALT LAKE CITY, UT 84145-0898
EMAIL

Kenneth Rubenstein, Esq.
PROSKAUER ROSE LLP
1585 BROADWAY
NEW YORK, NY 10036

Arthur B. Berger, Esq.
RAY QUINNEY & NEBEKER
36 S STATE ST STE 1400
PO BOX 45385
SALT LAKE CITY, UT 84145-0385
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOE ALVARADO,

Defendant.

ORDER FINDING THE
DEFENDANT ELIGIBLE FOR
FINANCIAL ASSISTANCE

Case No. 1:03-CR-00125 PGC

This matter is before the court on defendant's motion for a finding of eligibility as allowed under 18 U.S.C. § 3006A. Having reviewed the statute, as well Mr. Sharp's supporting affidavit, the court GRANTS defendant's motion and finds the defendant eligible for financial assistance to proceed with his appeal in the Tenth Circuit. This order applies to the waiver of costs and fees, as well as for an appointment of counsel on appeal.

DATED this 10th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:03-cr-00125

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.
29 S STATE ST #007
SALT LAKE CITY, UT 84111
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

Mr. Don Sharp, Esq.
2491 WASHINGTON BLVD #200
OGDEN, UT 84401
JFAX 8,801,3932340

**L. MILES LEBARON (#8982)
TYLER J. JENSEN (#9913)
LEBARON & JENSEN, P.C.
E.F. Durbano Building
476 West Heritage Park Blvd., Suite 200
Layton, Utah 84041
Telephone:(801) 773-9488
Facsimile: (801) 773-9489**

FILED
CLERK OF DISTRICT COURT
JAN 21 11 P 3 07
FBI - LAYTON
FBI - LAYTON

RECEIVED

FBI - LAYTON
FBI - LAYTON
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF UTAH**

IVORY HOMES,

Plaintiff,

vs.

**JASON WOLNEK and ABBY
WOLNEK,**

Defendants.

**ORDER EXTENDING
DISCOVERY DEADLINE**

Civil No. 1:04 CV 00006 PGC

**Judge Paul G. Cassell
Magistrate Judge Alba**

The Court having read and reviewed the Stipulation and Joint Motion for Extending Discovery Deadline (hereinafter "the Stipulation"), filed by the parties to the above-entitled action, and good cause appearing for the entry of an order approving the Stipulation and amending the Scheduling Order as sought,

IT IS HEREBY ORDERED THAT:

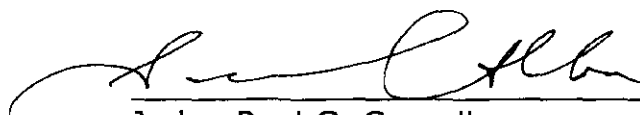
1. The Stipulation is approved;

43

2. The Fact Discovery deadline and Expert Discovery deadline shall be extended to March 15, 2005 and May 15, 2005 respectively with all other deadlines and dates set forth in the current Scheduling Order to remain unchanged.

DATED this 11th day of February 2005.

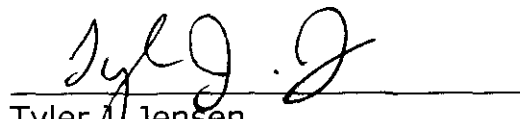
BY THE COURT:



~~Judge Paul G. Cassell~~
Magistrate Judge Samuel Alba

Approved as to form and content:

LEBARON & JENSEN, P.C.



Tyler J. Jensen
Attorney for Jason and Abby Wolnek

PRINCE, YEATES & GELDZAHLER



William G. Marsden
Attorney for Ivory Homes

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:04-cv-00006

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. William G Marsden, Esq.
PRINCE YEATES & GELDZAHLER
175 E 400 S STE 900
SALT LAKE CITY, UT 84111
EMAIL

Larry Miles LeBaron, Esq.
LEBARON & JENSEN PC
476 W HERITAGE PARK BLVD STE 200
LAYTON, UT 84041
EMAIL

Tyler J. Jensen, Esq.
LEBARON & JENSEN PC
476 W HERITAGE PARK BLVD STE 200
LAYTON, UT 84041
EMAIL

United States District Court
for the District of Utah

Petition and Order for Warrant for Offender Under Supervision

Name of Offender: **Brandon Wyatt**

Docket Number: **2:02-CR-00313-001-PGC**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell**

Date of Original Sentence: **August 13, 2002**

Original Offense: **Possession of a Stolen Firearm**

Original Sentence: **5 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **October 9, 2002**

PETITIONING THE COURT

[X] To issue a warrant and 3569 South 4400 West, West Valley City, Utah 84119 or
toll the supervision term 3175 South 1755 West, West Valley City, Utah 84119

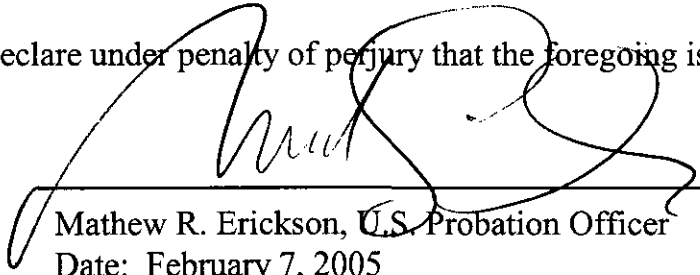
CAUSE

The probation officer believes that the offender has violated the conditions of supervision as follows:

Allegation No. 1: The defendant failed to notify the probation officer of his arrest on January 20, 2005.


Allegation No. 2: The defendant has failed to follow the instructions of the probation officer by not submitting to urinalysis testing on February 4, 2004.

I declare under penalty of perjury that the foregoing is true and correct


Mathew R. Erickson, U.S. Probation Officer
Date: February 7, 2005

THE COURT ORDERS:

- ☒ The issuance of a warrant
and tolling of the supervision term
☐ The issuance of a summons
☐ No action
☐ Other


Honorable Paul G. Cassell
United States District Judge

Date: 2/10/05 

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cr-00313

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

US Probation
DISTRICT OF UTAH
,
EMAIL

United States Marshal Service
DISTRICT OF UTAH
,
EMAIL

Mr. Stanley H Olsen, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

RECEIVED

FEB 6 2005

BROOKS, C. WILAS
U.S. DISTRICT COURT

RECEIVED CLERK P 2:04

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FEB - 6 2005
U.S. DISTRICT COURT

RONALD H. COLE,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

Court No. 03-CV-0144PGC

ORDER

RECEIVED

FEB - 7 2005

OFFICE OF
JUDGE PAUL G. CASSELL

Based upon Defendant's Unopposed Motion To Remand and good cause appearing therefor,

IT IS HEREBY ORDERED that pursuant to sentence four of 42 U.S.C. § 405(g), this case is remanded to the Commissioner for further administrative proceedings. IT IS FURTHER ORDERED that judgment shall be entered in accordance with Fed. R. Civ. P. 58, consistent with the United States Supreme Court's decision in Shalala v. Schaefer, 509 U.S. 292, 296-302 (1993).

Accordingly, this action shall be dismissed.

DATED this 10th day of February, 2005.

BY THE COURT:



Honorable Paul G. Cassell
United States District Court

37

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00144

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Maggie H. Abuhaidar, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

Mr. John J. Borsos, Esq.
PO BOX 112347
SALT LAKE CITY, UT 84147-2347
EMAIL

7:00 PM 2005
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

RECEIVED CLERK

UNITED STATES OF AMERICA,
Plaintiff,

2:03CR743PGC

FEB - 9 2005

U.S. DISTRICT COURT

vs.

ORDER RE-OPENING CASE

ALEJANDRO SALOME-GONZALEZ,
Defendant.

Judge Paul G. Cassell

Based upon motion of the government and good cause appearing
therefore,

IT IS HEREBY ORDERED that the above reference case be re-
opened.


DATED this 10th day of February, 2005.

RECEIVED

BY THE COURT:

FEB 10 2005

OFFICE OF
JUDGE PAUL G. CASSELL


PAUL G. CASSELL

United States District Court Judge

5

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cr-00743

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Richard D McKelvie, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

United States Marshal Service
DISTRICT OF UTAH

,
EMAIL

US Probation
DISTRICT OF UTAH

,
EMAIL

PAUL M. WARNER, United States Attorney (#3389)
SCOTT BATES, Assistant U.S. Attorney (#8517)
Attorneys for the United States of America
185 South State Street, #400
Salt Lake City, Utah 84111-1506
Telephone: (801) 524-5682
scott.bates@usdoj.gov

RECEIVED
FEB - 1 2005
JUDGE'S COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SANDY L. HORTON,

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

Civil No. 2:04CV00622 PGC

STIPULATION

RECEIVED
ORDER FEB - 2 2005
OFFICE OF
JUDGE PAUL G. CASSELL

The parties to the above-captioned action, by counsel, hereby stipulate and agree, as follows:

Plaintiff's claims for disability insurance benefits (DIB) and supplemental security income (SSI) will be remanded to the Commissioner, pursuant to sentence four of 42 U.S.C. § 405(g), and assigned to an administrative law judge (ALJ) who will hold a supplemental hearing and issue a new decision.

On remand, the ALJ will redetermine Plaintiff's mental residual functional capacity and explain the rationale (with references to the evidence) for any assessed limitations, and will address all relevant lay statements and testimony as well as the opinions of David R. Miller,


12

PAC, and Gary Nelson, PAC. The ALJ will also consider the evidence submitted in connection with Plaintiff's subsequent claim for SSI, filed on October 20, 2004.

Accordingly, this action shall be dismissed.

Respectfully submitted,

PAUL M. WARNER
United States Attorney

By: 
SCOTT PATRICK BATES
Assistant United States Attorney
Attorneys for Defendant

Date: 1/31/05

BRADFORD D. MYLER


By: 
T. JARED ELLIS, ESQ.
Attorneys for Plaintiff

Date: 1/26/05

OF COUNSEL:

Deana R. Ertl-Lombardi
Regional Chief Counsel, Region VIII
Thomas S. Inman
Assistant Regional Counsel
Office of the General Counsel
1961 Stout Street, Suite 1001A
Denver, CO 80294-3538

SO ORDERED

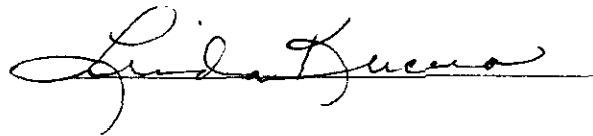

PAUL G. CASSELL
United States District Judge

Date: 2/10/05

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a copy of the foregoing STIPULATION and ORDER, were mailed, via first-class mail, to the following on this 24th day of January, 2005

T. Jared Ellis, Esq.
BRADFORD D. MYLER
1278 South 800 East
Orem, Utah 84097

A handwritten signature in cursive script, appearing to read "Linda Kucera", written over a horizontal line.

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00622

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bradford D. Myler, Esq.
MYLER LAW OFFICES
1278 S 800 E
PO BOX 970039
OREM, UT 84097
EMAIL

Scott Patrick Bates, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

7/13/11 P 2:05
DISTRICT OF UTAH
CLERK OF COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

INDIGO PRESS, INC.,

Appellant,

vs.

MODUS MEDIA INTERNATIONAL, INC.
n/k/a/ MODUSLINK CORPORATION and
DUANE H. GILLMAN, CHAPTER 7
TRUSTEE,

Appellees.

ORDER AFFIRMING DECISION OF
THE BANKRUPTCY COURT

Case No. 2:04-CV-01076PGC

Appellant Indigo Press, Inc., appeals from the bankruptcy court's order denying its motion to re-enter Profile Media, Inc.'s, Chapter 7 bankruptcy proceedings and to clarify the scope of Indigo's asset purchase agreement with Profile. The dispute centers on whether the asset purchase agreement includes the sale of an account receivable between Modus Media International, Inc., and Profile. Both parties have briefed the issue clearly and oral argument is not likely to provide further insight. This court has jurisdiction pursuant to 28 U.S.C. § 158(a). This court AFFIRMS the decision of the Bankruptcy Court, agreeing that the Modus account receivable is not part of the asset purchase agreement between Profile and Indigo.

13

BACKGROUND

In 2001, Profile entered Chapter 7 bankruptcy, after which Profile and Indigo entered into an asset purchase agreement. Indigo agreed to purchase “all of the accounts receivable of Seller listed on Exhibit C and the proceeds of all accounts receivable collected after October 31, 2001 and prior to the closing (collectively, the ‘Receivables’).” On May 17, 2002, the bankruptcy court entered the Sale Order approving the agreement as being in the best interests of the Debtor, its creditors, its estates, and all other parties in interest. Exhibit C of the asset purchase agreement lists “Modus Media International S.A. de C.V.” This, however, is a separate business entity organized under Mexican law and is not Modus or Modus’ alter ego. Modus is not listed on Exhibit C of the asset purchase agreement. Modus is listed on Profile’s Statement of Financial Affairs and its Schedules of Assets and Liabilities and in Schedule F as a creditor of Profile. Whether or not Profile had an account receivable is not contested and the court will proceed as though the account receivable is valid.

On November 21, 2003, Indigo brought suit against Modus in state court. Indigo alleged that it had purchased the account receivable for Modus from Profile. Modus removed the action to this court. Subsequently, Indigo and Modus stipulated to stay the federal court case so that Indigo could go before the bankruptcy court to clarify the scope of the asset purchase agreement and the Sale Order.

Before the hearing on its motion to clarify the scope of the asset purchase agreement, Indigo filed affidavits and depositions with the bankruptcy court supporting its argument. These documents were not offered or received into evidence. Additionally, correspondence between

the attorneys for Profile and Indigo sent after the Bankruptcy Court's Sale Order approving the sale states, "Indigo's purchase of accounts receivable includes all accounts of Profile. . . . It includes all accounts from the inception of the company, whether on your list or not, up to the present."¹ The Bankruptcy Court declined to consider this evidence, explaining, "Even if the Court were to consider such letters, they would not be useful in clarifying the agreement because they were never brought before the Court for its consideration."²

The Bankruptcy Court found the terms of the asset purchase agreement unambiguous and incapable of more than one reasonable interpretation. Applying Utah law, as required by the terms of the agreement, the Bankruptcy Court excluded extrinsic evidence to interpret the intent of the contractual agreement and therefore did not consider the correspondence between the companies after the Sale Order.³ Accordingly, the Bankruptcy Court found that Profile intended to sell and Indigo intended to purchase all accounts receivable listed in Exhibit C and proceeds of accounts receivable collected between certain dates. Since Modus is not listed in Exhibit C and Profile did not collect on any account receivable that they might have, the Bankruptcy Court concluded that the Modus account receivable was not part of the Sale Order.

DISCUSSION

Indigo raises three issues on appeal from the decision of the Bankruptcy Court. First, Indigo argues that the court erred in its decision because the asset purchase agreement and the

¹Brief of Appellant, Exhibit E.

²*Id.*, Exhibit B at 6.

³*WebBank v. Am. Gen. Annuity Serv. Corp.*, 54 P.3d 1139, 1145 (Utah 2002).

Sale Order allowed Indigo and Profile to amend the agreement without notifying the bankruptcy court. Next, Indigo argues that Modus does not have standing to raise issues or rights under the asset purchase agreement. And finally, Indigo claims that Modus has no privity of contract and therefore cannot enforce the asset purchase agreement. Each of these claims is without merit.

The Modus Account Receivable

Indigo first argues that the asset purchase agreement and the bankruptcy court's Sale Order allowed Indigo and Profile to amend the agreement. Modus contends this argument was raised for the first time in a reply brief. Indigo challenges this assertion and states that both parties have had the opportunity to address this issue. Appellate courts generally will not consider issues on appeal that were not presented to the trial court. This rule, however, is not inflexible.⁴ Because the issue was raised in the district court and Modus had the opportunity to address it, this court will consider whether the district court erred in its interpretation of the contract.

The initial determination of whether a contract's terms are ambiguous is a question of law.⁵ There is no dispute about what the terms of the asset purchase agreement itself include. Indigo's legal arguments hinge on extrinsic evidence that the bankruptcy court expressly declined to consider. Because the terms of the contract were unambiguous, it was not necessary for the court to consider Indigo's extrinsic evidence, including the correspondence between the attorneys for Profile and Indigo. Additionally, as the Bankruptcy Court points out, the correspondence was

⁴*Anixter v. Home-Stake Product Co.*, 77 F.3d 1215, 1228 (10th Cir. 1996).

⁵*City of Wichita v. Southwestern Bell Tel. Co.*, 24 F.3d 1282, 1287 (10th Cir. 1994).

not even brought before the court for its consideration. The terms of the asset purchase agreement are unambiguous and do not include the Modus account receivable, regardless of what correspondence extrinsic to the agreement approved by the court may say. Therefore, the Bankruptcy Court did not err in concluding that the asset purchase agreement did not include an account receivable for Modus.

Indigo points to provisions in the asset purchase agreement and the Sale Order that purportedly allow Indigo and Profile to amend the agreement without notice to the bankruptcy court. The asset purchase agreement provides that each party may “execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement” The agreement also provides that modifications must be in writing. Specifically, the Sale Order allows the agreement to be “modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court” These provisions do not allow the parties to change the intent, purpose, or terms of the agreement. The addition of an account receivable changes the terms of the agreement, which are unambiguous. Therefore, the notice and hearing requirements of 11 U.S.C. § 363(b)(1) had to be met before Profile could sell the Modus account receivable to Indigo.

Standing

Indigo argues that Modus does not have standing to raise issues or rights under the asset purchase agreement. Indigo brought the motion to clarify the scope of the asset purchase agreement and the Sale Order before the bankruptcy court. The bankruptcy court had subject

matter jurisdiction to address and decide the motion under 28 U.S.C. § 1334. Indigo does not directly challenge the bankruptcy court's authority to decide its motion to clarify. A party-in-interest with standing to appear and be heard in a bankruptcy case includes those whose pecuniary interests are directly affected by the bankruptcy proceedings.⁶ Without an order declaring the rightful owner of the disputed account, Modus is faced with the possibility of having to deal with two separate persons in two separate proceedings, making the same claim on the same asset for payment of the same debt. Additionally, Modus has standing to appear and challenge Indigo's motion to clarify the asset purchase agreement as a creditor of Profile with an interest in the maximum realization from the sale of assets of Profile's estate.⁷ Accordingly, Indigo's challenge to Modus' standing is without merit.

Privity of Contract

Indigo claims that Modus has no privity of contract and therefore cannot enforce the asset purchase agreement. Modus is not a party to the asset purchase agreement between Profile and Indigo. As discussed above, because this is a bankruptcy proceeding and Modus is a party-in-interest, Modus does have the right to enforce the agreement to ensure the maximum realization from the sale of Profile's estate. Therefore, Indigo's privity argument is also without merit.

CONCLUSION

The terms of the asset purchase agreement are unambiguous and do not include the sale of the Modus account receivable to Indigo. Profile and Indigo may not change the terms of the

⁶*Davis v. Mather (In re Davis)*, 239 B. R. 573, 579 (B.A.P. 10th Cir. 1999).

⁷*See In re Sapolin Paints, Inc.*, 11 B.R. 930, 936 (Bankr. E.D.N.Y. 1981).

agreement to include the Modus account receivable without meeting the notice and hearing requirements of 11 U.S.C. § 363(b). Furthermore, Modus has standing as a party-in-interest and may therefore enforce the terms of the asset purchase agreement. For these reasons, the court AFFIRMS the decision of the bankruptcy court.

DATED this 10th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Paul G. Cassell', written over a horizontal line.

Paul G. Cassell
United States District Judge

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-01076

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Stephen E. Quesenberry, Esq.
HILL JOHNSON & SCHMUTZ LC
3319 N UNIVERSITY STE 200
PROVO, UT 84604
EMAIL

Matthew Mikel Boley, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Mr. David E Leta, Esq.
SNELL & WILMER LLP
15 W SOUTH TEMPLE STE 1200
GATEWAY TOWER W
SALT LAKE CITY, UT 84101
EMAIL

Mr. Duane H Gillman, Esq.
MCDOWELL & GILLMAN PC
50 W BROADWAY STE 1200
SALT LAKE CITY, UT 84101
EMAIL

Bankruptcy Clerk's Office
US BANKRUPTCY COURT
, 84101
EMAIL

David B. Watkiss, Esq. (#3401)
Anthony C. Kaye, Esq. (#8611)
Jason D. Boren, Esq. (#7816)
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
One Utah Center, Suite 600
201 South Main Street
Salt Lake City, Utah 84111-2221
Telephone: (801) 531-3000
Facsimile: (801) 531-3001

Attorneys for Defendant Capital One, F.S.B. **JUDGE PAUL G. CASSELL**

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FEB - 8 2005

FEB - 9 2005

U.S. DISTRICT COURT

OFFICE OF

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

SERGE CHEVRIER, an individual,

Plaintiff,

vs.

CAPITAL ONE FINANCIAL
CORPORATION, a foreign corporation,
CAPITAL ONE BANK and CAPITAL ONE,
F.S.B.,

Defendants.

**ORDER GRANTING MOTION AND
STIPULATION OF DISMISSAL WITH
PREJUDICE**

State Case No. 030920260

Federal Case No. 2:03CV00993 PGC

Magistrate Judge David Nuffer

Based upon the parties' Joint Motion and Stipulation of Dismissal With Prejudice,
and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Complaint
in the above-captioned action be, and hereby is, dismissed with prejudice, with the parties to bear
their respective attorneys' fees and costs.

DATED this 10th day of February 2005.

BY THE COURT



Honorable Paul G. Cassell
Federal District Court Judge

APPROVED AS TO FORM:



Timothy Miguel Willardson, Esq.
Attorney for Plaintiff Serge Chevrier

BALLARD SPAHR ANDREWS & INGERSOLL, LLP



David B. Watkiss, Esq.
Anthony C. Kaye, Esq.
Jason D. Boren, Esq.
Attorneys for Defendant Capital One, F.S.B.

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____ 200_, I caused a true and correct copy of the foregoing **ORDER GRANTING MOTION AND STIPULATION OF DISMISSAL WITH PREJUDICE** to be mailed, via First-Class Mail, postage prepaid, to:

David B. Watkiss, Esq.
Anthony C. Kaye, Esq.
Jason D. Boren, Esq.
BALLARD SPAHR ANDREWS & INGERSOLL, LLP
One Utah Center, Suite 600
201 South Main Street
Salt Lake City, Utah 84111-2221

Timothy Miguel Willardson, Esq.
3165 South 300 West
Salt Lake City, Utah 84115

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00993

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Timothy M Willardson, Esq.
NELSON SNUFFER DAHLE & POULSEN
10885 S STATE ST
SANDY, UT 84070
EMAIL

David B. Watkiss, Esq.
BALLARD SPAHR ANDREWS & INGERSOLL
201 S MAIN STE 600
SALT LAKE CITY, UT 84111-2215
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

KAI HAMPTON,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.


**ORDER DENYING DEFENDANT'S
§ 2255 MOTION TO VACATE
SENTENCE**

Case No. 2:04-CV-00894 PGC

In his motion, defendant Kai Hampton argues that his sentence must be vacated or amended because of the recent *Booker/Blakely* decisions. In light of this court's opinion in *Rucker v. United States*,¹ Hampton's § 2255 motion to vacate sentence is dismissed because those rulings cannot be retroactively applied.

DATED this 10th day of February, 2005.

BY THE COURT:


Paul G. Cassell
United States District Judge

¹Civil No. 2:04-CV-00914 (D. Utah, Feb. 10, 2005).

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00894

True and correct copies of the attached were either mailed, faxed or e-mailed
by the clerk to the following:

Kai Hampton
TAFT FEDERAL CAMP
29371-112 U#A4A31LOW
PO BOX 7001
TAFT, CA 93268

Veda M. Travis, Esq.
US ATTORNEY'S OFFICE
,
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

OSWALDO RINCON-NUNES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

**ORDER DENYING DEFENDANT'S
§ 2255 MOTION TO VACATE
SENTENCE**

Case No. 2:05-CV-00076 PGC

In his motion, defendant Oswaldo Rincon-Nunes argues that his sentence must be vacated or amended because of the recent *Booker/Blakely* decisions. In light of this court's opinion in *Rucker v. United States*,¹ Rincon-Nunes's § 2255 motion to vacate sentence is dismissed because those rulings cannot be retroactively applied.

DATED this 10th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

¹Civil No. 2:04-CV-00914 (D. Utah, Feb. 10, 2005).

tsh

United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:05-cv-00076

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Oswaldo Rinçon-Nunes
CIBOLA CORRECTIONAL CENTER
11479-081
PO BOX 3540
MILAN, NM 87021

Mr. Richard N Lambert, Esq.
US ATTORNEY'S OFFICE

,
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

FILED 11 P 3 05

OR 11 11 11

11 11 11

EDUARDO SOTO GERARDO,
Plaintiff,

**ORDER DENYING DEFENDANT'S
§ 2255 MOTION TO VACATE
SENTENCE**

vs.

UNITED STATES OF AMERICA,
Defendant.

Case No. 1:05-CV-00012 PGC

In his motion, defendant Eduardo Soto-Gerardo argues that his sentence must be vacated or amended because of the recent *Booker/Blakely* decisions. In light of this court's opinion in *Rucker v. United States*,¹ Gerardo's § 2255 motion to vacate sentence is dismissed because those rulings cannot be retroactively applied.

DATED this 10th day of February, 2005.

BY THE COURT:



Paul G. Cassell
United States District Judge

¹Civil No. 2:04-CV-00914 (D. Utah, Feb. 10, 2005).

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United States District Court
for the
District of Utah
February 14, 2005

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 1:05-cv-00012

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Eduardo Soto-Gerardo
11580-081
PO BOX 30010001-H 100
CALIFORNIA CITY, CA 93504

Michelle Wickham, Esq.
US ATTORNEY'S OFFICE

,
EMAIL